TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. ~~433~~. 134.

ERIE RAILROAD COMPANY, PETITIONER,

vs.

ERIE AND WESTERN TRANSPORTATION COMPANY.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

PETITION FOR CERTIORARI FILED OCTOBER 16, 1905.
CERTIORARI AND RETURN FILED NOVEMBER 17, 1905.

(19,935.)

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IN THE

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE SEVENTH CIRCUIT.

OCTOBER TERM, A. D. 1904.

No. 1137.

ERIE & WESTERN TRANSPORTATION COMPANY,
Appellant,

vs.

ERIE RAILROAD COMPANY,
Appellee.

MR. HARVEY D. GOULDER,
Counsel for Appellant.

MR. CHARLES E. KREMER,
MR. W. O. JOHNSON,
Counsel for Appellee.

Appeal from the District Court of the United States for the Northern District of Illinois.

Pleas had at a regular term of the District Court of the United States for the Northern Division of the Northern District of Illinois begun and held at the Unites States Court Rooms in the City of Chicago in said Division of said District on the First Monday of July (it being the fourth day thereof) in the year of our Lord One Thousand Nine Hundred and Four and of the Independence of the United States the One Hundred Twenty-eighth year.

The Honorable Christian C. Kohlsaat, Judge, being absent, John C. Ames, United States Marshal being absent,

In pursuance with the order of the Court of date July 2, 1904, T. C. MacMillan, Clerk, by his Deputy Chas. A. Buell, being now here present, adjourns said Court until Wednesday, July 6, A. D. 1904, at ten o'clock A. M.

6. Be it remembered that heretofore, to wit, on the 6th day of
2 February, A. D. 1904, there was filed in the Clerk's Office of said Court, a Libel of the Erie Railroad Company vs. Propeller "Conemaugh" in Admiralty, No. 9576, said libel being in the words and figures following, to wit:

IN THE DISTRICT COURT OF THE UNITED STATES,

For the Northern District of Illinois,

Northern Division.

In Admiralty.

To the Honorable Christian C. Kohlsaat, Judge of said Court:

The libel of the Erie Railroad Company, New York, against the propeller "Conemaugh", her engines, boilers, boats, tackle, apparel and furniture, alleges as follows:

1st: That at the different times mentioned in the libel the libelant was a corporation duly organized under the laws of the State of New York.

2nd: That at the time of the collision hereinafter mentioned the Union Steamboat Company was a corporation organized under the laws of the State of New York, with its principal office at Upper Nyack, Rockland County, New York, and at the time of the said collision, and for a long time thereafter, was the sole owner of the Propeller "New York," hereinafter mentioned.

3rd: That on the 30th day of June, 1896, the libelant owned all of the capital stock of the Union Steamboat Company, and on the said day, under the laws of New York, known as Chapter 935 of the laws of 1896, merged the said Union Steamboat Company in and with the libellant, and that by virtue of the said merger the libellant acquired and became possessed of all the estate, property, rights, privileges and franchises of such corporation
3 in substantially the same manner as the same were held by the said Union Steamboat Company, and that by virtue of the said merger and consolidation of the said Union Steamboat Company with the libelant, the latter became entitled to collect and claim all debts and claims due to the said Union Steamboat Company from any person or party, and therefore, became and was and is entitled to the various sums of money to be recovered by it in this suit.

4th: That at the different times hereinafter mentioned the said Propellers "New York" and "Conemaugh" were steam ves-

sels of more than twenty tons burthen, enrolled and licensed for the coasting trade, and employed in commerce and navigation upon the Great Lakes.

5th: That on or about the 21st day of October, 1891, a collision occurred on the waters of the Detroit River between the said Propellers "New York" and "Conemaugh," which resulted in the sinking of the "Conemaugh."

6th: That on the 11th day of November, 1891, the Erie & Western Transportation Company, as owner of the said Propeller "Conemaugh," and as trustee and bailee of her cargo, filed a libel in the District Court of the United States for the Eastern District of Michigan, to recover the aggregate sum of $70,000 for damages sustained by the Propeller "Conemaugh" and her cargo by reason of said collision.

7th: That thereafter the Union Steamboat Company, as the owner of the Propeller "New York," filed its answer to said libel, denying all liability for the said collision, and the damage resulting therefrom, and alleging that the said collision was due solely
4 to the fault of the Propeller "Conemaugh," and that the damages suffered by the "New York," arising out of the said collision, amounted to the sum of $3000.00.

8th: That thereupon a trial was had in the District Court of the United States for the Eastern District of Michigan, and the Court held that both the Propellers were at fault for the collision, as will more fully appear from a decision of the case entitled The "New York," 53 Federal Reporter, 553.

9th: That thereupon a rehearing was asked for on behalf of the Erie & W. Trans Company, and the District Court reversed its former decision and held the Propeller "New York" solely at fault for the collision.

10th: That thereupon the following Insurance Companies filed their petitions and intervened in the said cause, claiming damages to the cargo of the "Conemaugh," which they had insured in the following amounts:

British & Foreign Marine Insurance Company, Limited	$2421.84
Insurance Company of North America	7950.09
Union Marine Insurance Company	8553.06
Marine Insurance Company	916.57

11th: To all of the petitions of the above intervenors the Union Steamboat Company filed its answer, denying all liability for the collision, and alleging that the fault of the same rested solely upon the "Conemaugh."

12th: That on the 25th day of January, 1895, a stipulation was made between the proctors for the Union Steamboat Company and intervenors on the one side, and the proctors for the claimant and cross libelant on the other, being all of the parties interested in said cause, in which it was agreed that the damages sustained by the owner of the Propeller "New York," on account of the said collision, amounted to the sum of $3391.19.

13th: That subsequently a decree was entered in favor of libellant, the Erie & Western Transportation Company, for all of the damages sustained by the Erie & Western Transportation
5 Company as owner of the "Conemaugh," and also as the bailee of her cargo and there was also included decrees for the damage sustained by the respective Insurance Companies which had intervened in the said cause.

14th: That upon the hearing of the said cause in the Circuit Court of Appeals for the Sixth Circuit, to which the same had been removed by appeal, the latter Court reversed the decision of the District Court and found the Propeller "Conemaugh" solely at fault for the collision and decreed that the Union Steamboat Company was entitled to recover damages sustained by the Propeller "New York." For a full text of the decision in the said cause reference is hereby had to the cause of The "New York," 82 Federal Reporter, 819.

15th: A petition for a rehearing was filed in the said cause, but was denied by the said Circuit Court of Appeals for the Sixth Circuit, and for a full text of the decision reference is had to the case of The "New York," 82 Federal Reporter, 814.

16th: That thereupon the Erie & Western Transportation Company filed its petition in the Supreme Court of the United States for a writ of certiorari in the said cause, directed to the Circuit Court of Appeals for the Sixth Circuit, which writ the Court granted and the case was removed to the Supreme Court of the United States and there heard and decided, the Court finding both the Propeller "Conemaugh" and the Propeller "New York" at fault for the collision, and that the damages be divided. For the full text of this decision see the case of the "New York," 176 U. S. 187.

6 17th: That thereupon the Supreme Court of the United States, on the 22nd day of January, 1900, issued its mandate in the words and figures following, to wit:

"UNITED STATES OF AMERICA, } ss.:

To the President of the United States of America, to the Honorable the Judges of the District Court of the United States for the Eastern District of Michigan,

Whereas lately in the United States Circuit Court of Appeals for the Sixth Circuit, in a cause between the Union Steamboat Company, claimant of the Propeller "New York," appellant, and the Erie & Western Transportation Company, libellant, and the British & Foreign Insurance Company, Limited; Insurance Company of North America, The Union Marine Insurance Company, and the Marine Insurance Company, Limited, intervening petitioners, appellees, wherein the decree of the said Circuit Court of Appeals entered in said cause on the 5th day of October, A. D. 1897, is in the following words: "This cause came on to be heard on the transcript of the record from the District Court of the United States for the Eastern District of Michigan, and was argued by counsel.

'On consideration whereof, it is now here ordered, adjudged and decreed by this Court that the decree of the said District Court in this cause be and the same hereby is reversed with costs, and the cause is remanded to the Court whence it came, with directions to dismiss the libel of the owners of the "Conemaugh," and the petition of the intervening Insurance Companies, and to enter a decree in personam in favor of the owners of the New York against the owners of the Conemaugh for the agreed damages to the New York,' as by inspection of the transcript of the record of the United States Circuit Court of Appeals, which was brought into
7 the Supreme Court of the United States by virtue of a writ of certiorari, agreeably to the Act of Congress in such case made and provided, fully and at large appears.

And whereas, in the present term of October, in the year of our Lord one thousand eight hundred and ninety-nine the said cause come on to be heard before the said Supreme Court on the said transcript of record, and was argued by counsel.

On consideration whereof, it is now ordered, adjudged and decreed by this Court that the decree of the said United States Circuit Court of Appeals in the cause be and the same is hereby reversed, the claimants of the Conemaugh, and the claimant of the New York each to pay one half of all costs in this cause.

And that the said Erie & Western Transportation recover

against the Union Steamboat Company, $276.75 for one half of the cost herein expended and have execution therefor.

And it is further ordered, that this cause be and the same is hereby remanded to the District Court of the United States for the Eastern District of Michigan, with direction to enter a decree in conformity with the opinion of this Court, with interest from July 3rd, 1896, until paid, at the same rate per annum that decrees bear in the Courts of the State of Michigan.

Dec. 7th, 1899.

You therefore, are hereby commanded that such execution and proceedings be had in the said cause in conformity with the opinion and decree of this Court, as according to right and justice and the laws of the United States ought to be had, the said writ of certiorari notwithstanding.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 22nd day of January, in the year of our Lord one thousand nine hundred.

8 JAMES H. MCKENNEY,
Clerk of the Supreme Court of the United States."

18th: That afterwards, and subsequent to the decision of the Supreme Court on the 17th day of March, 1900, the proctors representing the different parties interested in said litigation, entered into a stipulation which defined the amount of damages sustained by the different parties interested in the said cause, which stipulation is in the words and figures, following, to wit:

"THE DISTRICT COURT OF THE UNITED STATES,

For the Eastern District of Michigan.

The Erie & Western Transportation Company, owner of the Propeller Conemaugh, Libelant, The British & Foreign Marine Insurance Company, Limited; The Insurance Company of North America, The Union Marine Insurance Company, and the Marine Insurance Company, Limited, *Intervenors.*	In Admiralty.
vs.	
The Propeller "New York," The Union Steamboat Company, *Complainant.*	

It is hereby stated that the losses sustained by the parties to

this cause by the collision between the said Propellers Conemaugh and New York, with interest to July 3rd, 1896, shown by the record in said cause, are as follows:

Erie & Western Transportation Company, owners of Propeller Conemaugh	$30,508.46
Erie & Western Transportation Company, Trustee for underwriters on cargo, other than intervenors	19,627.67
British & Foreign Marine Insurance Company, Ltd.	2,421.84
The Insurance Company of North America.	7,950.09
The Union Marine Insurance Company.	8,553.06
The Marine Insurance Company, Limited	916.57
9 Union Steamboat Company, owners Propeller New York	4,341.80
Total losses.	74,319.49

HARVEY D. GOULDER,
Proctor for Libellant,
F. H. & G. L. CANFIELD,
Proctors for intervenors.
C. E. KREMER & WISNER & HARVEY,
Proctors for Claimant.

Dated March 17th, 1900."

19th: That thereupon on the 24th day of March, 1900, the District Court of the United States for the Eastern District of Michigan, in pursuance to the mandate of the Supreme Court, passed and entered the following decree.

IN THE DISTRICT COURT OF THE UNITED STATES

For the Eastern District of Michigan.

The Erie & Western Transportation Company, owner of the Propeller Conemaugh, Libelant, The British & Foreign Marine Insurance Company, Limited; The Insurance Company of North America; The Union Marine Insurance Company, Limited, *Intervenors*, vs. The Propeller New York, the Union Steamboat Company, *Claimant.*	In Admiralty.

On reading and filing the mandate of the Supreme Court in this cause, bearing date the 22nd day of January, in the year of our Lord one thousand nine hundred, and in obedience to said mandate and in consonance with the opinion of the Supreme Court herein, it is now ordered, adjudged and decreed that the said Propeller "Conemaugh," and the said Propeller New York, were both in fault for the collision set forth in the pleadings in this cause, and that the damages to said vessels and their owners resulting therefrom be equally divided between the said Erie & Western Transportation Company and the said Union Steamboat Company;

And it is further ordered, adjudged and decreed that the underwriters and owners of the cargo of said Propeller Conemaugh recover the full amount of their damages against the Union Steamboat Company and the American Surety Company, of New York, its surety upon the bond or stipulation herein filed, with interest at the rate of seven per cent. per annum (that being the rate per annum that judgments and decrees bear in the courts of Michigan under the statute of said State), from the 3rd day of July, 1896, until paid.

And it appearing that the above named intervenors were insurers of portions of said cargo, and that they have suffered damages on account of said collision, as follows, to wit:

The British & Foreign Marine Insurance Company, Limited, in the sum of $2421.84
The Union Marine Insurance Company, in the sum of .. 8553.06
The Marine Insurance Company, Limited, in the sum of 916.57
The Insurance Company of North America, in the sum of 7950.09

It is further ordered, adjudged and decreed that said intervenors severally recover from the said Union Steamboat Company and its surety their several damages aforesaid, amounting in all to the sum of $19,841.56, with interest thereon at the rate of seven per cent. per annum from the 3rd day of July, A. D. 1896, until paid, and that the said Union Steamboat Company and the American Surety Company pay into Court, or to the proctors for said inter-
11 venors, the damages and interest aforesaid, and that in default thereof the said intervenors have executions therefor.

And it further appearing that the owners of said cargo and their underwriters, other than the intervenors, have suffered damages by said collision in the sum of $19,627.67, for which the said Erie & Western Transportation Company appears in this suit as Trustee only, it is further ordered, adjudged and decreed that said Trustee recover from said Union Steamboat Company and its surety, in trust, for the said owners of and under writers on cargo, the aforesaid sum of $19,627.67 with interest thereon at the rate of seven per cent. per annum from July 3rd, 1896, until paid, and that it have execution therefor.

And it is further ordered, adjudged and decreed that the said Erie & Western Transportation Company recover from the said Union Steamboat Company and its surety aforesaid, the sum of $13,083.33 (being one half of the damages to said Conemaugh, less one half of the damage suffered by said New York in said collision), together with interest thereon at the rate of seven per cent. per annum from July 3, 1896.

And it is also decreed that said libellant recover of said claimant and its surety, $276.75, as one half the costs of said cause in the Supreme Court, and also one half of all costs of said cause in this Court and in the United States Circuit Court of Appeals for the Sixth Circuit.

And it is further ordered that if default be made in payment of any of the said sums, executions issue therefor against the said claimant and its surety aforesaid.

HENRY D. SWAN,
District Judge."

20th: And thereupon a petition was filed by the Union Steamboat Company in the Supreme Court of the United States, praying for a writ of mandamus to issue to the Judge of the District Court of the United States to show cause why he did not obey the
12 mandate of the Supreme Court, as hereinbefore set forth.

The petition being granted the Court had a hearing upon the same, and then denied the writ prayed for, which decision will be

6. found in the case of Ex parte Union Steamboat Company, 178 United States, 317.

21st: That thereupon an appeal was prayed from the decision of the District Court, in entering the decree above referred to, to the Circuit Court of Appeals for the Sixth Circuit, and a motion therein was made by the appellees to dismiss the appeal, which was denied, as reference thereto will more fully show the "New York," 104 Federal Reporter, 561.

22nd: That thereupon the case came up for hearing in the United States Circuit Court of Appeals for the Sixth Circuit, and the Court affirmed the decision and the decree of the District Court herein last before mentioned, as will more fully appear from the decision of the Court in the case of the "New York," 108 Federal Reporter, 102.

23rd: That thereupon a petition for a writ of certiorari was filed in the Supreme Court of the United States, by the Union Steamboat Company, to be directed to the United States Circuit Court of Appeals for the Sixth Circuit, which said petition was granted, and thereupon the case came up for a hearing in the Supreme Court of the United States, and the decision of the said Circuit Court of Appeals was affirmed, as will appear from the full text of said decision found in the case of the Union Steamboat Company vs. Erie & Western Transportation Company, 189 United States, 363.

13 24th: That thereupon the mandate of the Supreme Court of the United States issued to the District Court of the United States for the Eastern District of Michigan, affirming the decree entered by the said Court on the 24th day of March, 1900, and execution issuing thereon this libellant, as the successor of the Union Steamboat Company, was compelled to pay the amount of said decree, with interest thereon at the rate of 7 per cent. per annum, as provided by the said decree.

25th: That the Court having decided and found that the said Propellers "Conemaugh" and "New York" were both at fault for the said collision, they therefore, became and were liable each for one half of all the damages arising out of the said collision, and that the total amount of the said damages, as agreed to by the said stipulation of the parties, amounted to the sum of $74,319.49, and the Union Steamboat Company and libellant became and were therefore, liable for the sum of $37,159.74, one half of the total damages arising out of the said collision, and deducting from this the damages sustained by the Propeller "New York", left the sum of $32,817.94 for it to pay, but instead thereof the said District Court, by its decree and the execution thereunder, compelled the Union Steamboat Company and libellant to pay the sum of $52,552.55.

26th: That the said decree was arrived at by compelling the

Union Steamboat Company and libellant to pay all of the damages sustained by the Intervening Insurance Companies, amounting in the aggregate to $19,841.56, and also the total damages, to the cargo, represented by the Erie & Western Transportation Company as trustee, and amounting to the sum of $19,627.67, or a total of $39,469.23, and that it did not permit the Union Steamboat Company or libellant to recoup or offset one half of the foregoing
14 sums, paid on account of the loss and damage to the cargo, against the claim of the Erie & Western Transportation Company, on account of the damages to the Propeller "Conemaugh," because they claimed that affirmative relief in that respect had not been demanded by separate pleadings, and that the Union Steamboat Company and libellant therefore must be relegated to its separate remedy against the "Connemaugh" for a recovery of a moiety of the damages paid on account of the cargo.

27th: That the Union Steamboat Company and libellant have, at different times in the proceedings, prayed the Court to decree, and the Erie & Western Transportation Company to pay the aforesaid sum, but the said Erie & Western Transportation Company has failed so to do, and the Union Steamboat Company and libellant were therefore, compelled to pay the aforesaid difference of $19,734.61, with interest thereon at the rate of 7 per cent. per annum from the 24th day of March, 1900, to the time of payment, upon which said sum libellant is entitled to the legal rate of interest to the date of its payment by the owner of the "Connemaugh."

28th: That libellant is entitled to recover from the said Propeller "Conemaugh" and her owners, the Erie & Western Transportation Company, the aforesaid sum of $19,734.61, with interest thereon to the date of payment.

29th: That all and singular the premises are true.

Wherefore libellant prays that process in due form of law may issue against the Propeller "Connemaugh," her engines, boats, boilers, machinery, tackle, apparel and furniture, and that this Honorable Court will be pleased to pronounce for libellant's demand and decree the same paid, with costs and interest, and that the said Propeller be condemned and sold to pay the same, and for such
15 other and further relief and redress in the premises as in law and justice libellant is entitled to receive.

ERIE RAILROAD CO.,
by C. E. KREMER,
Proctor

C. E. KREMER,
W. O. JOHNSON,
Proctors.

6. State of Illinois, } ss.
County of Cook. }

On this 6th day of February, A. D. 1904, before me personally appeared C. E. Kremer, Proctor, the agent of the above named libellant, and was sworn to the truth of the foregoing libel.

THEO. C. ROBINSON,
(Seal) *Notary Public.*

(Endorsed) 9576. District Court of U. S. North. District of Ills. Erie Railroad Co. vs. Prop. Conemaugh. Libel. Filed Feb. 6, 1904. T. C. MacMillan, Clerk. C. E. Kremer, W. O. Johnson, Proctors for Libellant.

And afterwards, to wit, on the 6th day of February, A. D. 1904, there was filed in the Clerk's Office of said Court, in the above entitled cause, a Libellant's Stipulation, same being in the words and figures following, to wit:

16 LIBELANT'S STIPULATION.

United States of America,
Northern District of Illinois, } ss.
Northern Division.

United States District Court,..... Term, A.D.18....
whereas, a Libel was filed in this Court on the 6th day of February A. D. 1904, by Erie Railroad Company, against the Propeller Conemaugh her boilers, engines, machinery, boats, tackle, apparel and furniture, for the reasons and causes in said libel mentioned, and praying that the same may be condemned, and sold to answer the prayer of the libelant; and the said libelant and C. E. Kremer, Charles W. Greenfield, sureties, the parties hereto, hereby consenting and agreeing that in case of default or contumacy on the part of the libelant, or its sureties, execution may issue against their goods, chattels, and lands for the sum of two hundred and fifty dollars.

Now, Therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulators undersigned shall be, and are, bound in the sum of two hundred and fifty dollars, conditioned that the libelants above named shall pay all such costs as

shall be awarded against it by this Court, or, in case of appeal, by the Appellate Court.

ERIE RAILWAY CO.,
by C. E. KREMER, *Proctor.*
C. E. KREMER.
CHARLES W. GREENFIELD.

Taken and acknowledged this.....day of.....A. D. 18..... before me.

Northern District of Illinois:- } ss.

C. E. Kremer, party to the above stipulation, being duly sworn, depose and say that he reside in the Northern District of Illinois, and is worth the sum of five hundred dollars over and above all his debts and liabilities.

C. E. KREMER.

Sworn this 6 day of February, A. D. 1904 before me.

CHARLES W. GREENFIELD,
(Seal) *Notary Public.*

17 (Endorsed) 9576. District Court United States, Northern District of Illinois, Northern Division. In Admiralty. Erie Railroad Co. vs. Propeller "Conemaugh." Libelant's Stipulation. Filed February 6, 1904. T. C. MacMillan, Clerk. C. E. Kremer, W. O. Johnson, Proctor for Libelant.

18 And afterwards, to wit, on the 18th day of April, A. D. 1904, there was filed in the Clerk's Office of said Court, in the above entitled cause, a Claim, same being in the words and figures following, to wit:

In the District Court of the United States,

For the Northern District of Illinois.

Erie Railroad Company,
vs.
Propeller "Conemaugh," her engines, etc., } In Admiralty.

To the Honorable Christian C. Kohlsaat, Judge of the District Court of the United States, Within and for said District:

Now comes the Erie & Western Transportation Company, a corporation of the commonwealth of Pennsylvania, owner of the said propeller "Conemaugh," her engines, boilers, boats, tackle, apparel and furniture, intervening for its interest in the said property, appears before this Honorable Court and claims the said property and states that the said Erie & Western Transportation Company is the true and bona fide owner thereof, and that no other person or persons are the owners thereof.

And thereupon, the said claimant prays that this Honorable Court will be pleased to decree a restitution of the aforesaid property to said owner, The Erie & Western Transportation Company, and otherwise right and justice to administer in the premises.

The Erie & Western Transportation Co.
by J. C. Evans, *W. Mngr.*

19 Subscribed and sworn to before me by J. C. Evans this 19th day of February, A. D. 1904, at Buffalo, in the State of New York.

Edward H. Chase,
[Seal] *Notary Public.*

In the District Court of the United States for the Northern District of Illinois. No. 9576. Erie Railroad Company, vs. Propeller "Conemaugh," her engines, etc. Claim. Filed April 18, 1904. T. C. MacMillan, Clerk. Goulder, Holding & Masten, Proctors for Claimant.

20 And afterwards, to wit, on the 18th day of April, A. D. 1904, there was filed in the Clerk's Office of said Court, in the above entitled cause, a Bond, same being in the words and figures following to wit:

Know all Men by these Presents, That we, The Erie & Western Transportation Company, as principal, and The Bankers Surety Company, as surety, do hereby acknowledge ourselves, jointly and severally, to be held and firmly bound unto The Erie Railroad Company in the sum of Thirty Thousand Dollars, lawful money of the United States of America, to be paid unto the said Erie Railroad Company, its successors or assigns, to which payment well and truly to be made, we hereby bind ourselves our successors and assigns firmly by these presents:

Sealed with our Seals and dated this 19th day of February in the year of our Lord one thousand nine hundred and four, and of the Independence of the United States the one hundred and twenty-eighth.

Whereas, a Libel has been filed in the District Court of the United States within and for the Northern District of Illinois on the 6th day of February, A. D. 1904, by The Erie Railroad Company against the propeller "Conemaugh," her engines, boilers, boats, tackle, apparel and furniture, in a certain action, etc., civil and maritime, for damages, wherein it is alleged that there is due and owing to the said Erie Railroad Company the sum of Nineteen Thousand Seven Hundred Thirty-four and 61/100 Dollars ($19734.61).

The Condition of this Obligation is such, that if the above bounden Erie & Western Transportation Company shall abide and answer the decree of the Court in such cause, then the above obligation to be void, otherwise to be and remain in full force and virtue.

THE ERIE & WESTERN TRANSPORTATION CO.
by J. C. EVANS, *W. Mngr.*

THE BANKERS SURETY COMPANY,
21 D. A. MACBETH,
2nd Vice President.
Attest: HOWARD H. BURGESS,
Secretary. [Seal]

Taken and acknowledged before me and signed by the Erie & Western Transportation Company in my presence, at Buffalo in the State of New York, this 19th day of February, A. D. 1904.

EDWARD H. CHASE,
[Seal]. *Notary Public.*

Taken and acknowledged before me and signed by the Bankers

Surety Company in my presence at Cleveland in the State of Ohio, this 15 day of April, A. D. 1904.

TRACY H. DUNCAN,
Notary Public in and for County of Cuyahoga and State of Ohio.
(Seal)

Approved C. E. KREMER,
Proctor.

I hereby approve of the above bond.

.....
United States District Judge.

(Endorsed) In the District Court of the United States for the Northern District of Illinois. No. 9576. Erie Railroad Company vs. Propeller "Conemaugh," her engines, etc. Bond. Filed April 18, 1904, T. C. MacMillan, Clerk. Goulder, Holding & Masten, Proctors for claimant.

22 And afterwards, to wit, on the 18th day of April, A. D. 1904, there was filed in the Clerk's Office of said Court in the above entitled cause, Exceptions of The Erie & Western Transportation Company, said Exceptions being in the words and figures following, to wit:

IN THE DISTRICT COURT OF THE UNITED STATES

For the Northern District of Illinois.

In Admiralty.

No.

Erie Railroad Company, *Libelant*; vs. Propeller "Conemaugh," Her engines, etc., Erie & Western Transportation Company, *Claimant.*	Exceptions of the Erie & Western Transportation Company, *Claimant.*

To the Honorable Christian C. Kohlsaat, Judge of the District Court of the United States, for the Northern District of Illinois.
Claimant excepts to the libel filed herein on the following grounds:
I. That the allegations of said libel do not disclose any admiralty or maritime claim or lien upon said propeller Conemaugh.

II. Because it appears from said libel that the Union Steamboat Company, under the course and practice of the admiralty courts of the United States, has already had its day in court for all damages arising from or consequent upon the collision referred to therein, has had its claim directly adjudicated upon with all the parties before the Court, and the same is res adjudicata.

III. Because it appears from said libel that the Union Steamboat Company has already presented to a court of competent jurisdiction a claim of damage by reason of the collision set up in said libel, that the same has been adjudicated upon and paid by this claimant in accordance with the course and practice of the admiralty courts of the United States in cases of mutual fault, and to permit the libellant to maintain this action would be to permit the splitting of a single cause of action.

IV. Because libellant by its predecessor in ownership of the propeller New York has already had its day in a court of competent jurisdiction, has presented its claim, had it adjudicated upon and has received payment, according to the course and practice of
23 admiralty courts of the United States in cases of mutual fault, on account of damage sustained by it by reason of the collision set up in said libel, with full right and opportunity and obligation to present all matters arising from or in consequence of said disaster, and if it failed to set up and claim any damage or right growing out of said collision, it is estopped from now presenting it.

THE ERIE & WESTERN TRANSPORTATION CO.,
By GOULDER, HOLDING & MASTEN,
Its Proctors.

(Endorsed) No. 9576. In the District Court of the United States for the Northern District of Illinois. In Admiralty. Erie Railroad Company, Libellant, vs. Propeller "Conemaugh" her engines, etc., Erie & Western Transportation Company, Claimant. Exceptions of the Erie & Western Transportation Company, Claimant. Filed April 18, 1904. T. C. MacMillan, Clerk. Goulder, Holding and Masten, Proctors for Claimant.

24 And afterwards, to wit, on the 13th day of June, A. D. 1904, the following order was had and entered of record in said cause, before the Hon. Christian C. Kohlsaat, Judge, to wit:

Erie Railroad Co.
9576. vs.
Propeller Conemaugh

This cause coming on to be heard on the exceptions to the libel herein, come the parties by their proctors and after arguments, the Court being fully advised in the premises overrules said exceptions, to which ruling of the Court the claimant duly excepts; whereupon the claimant is ruled to answer the libel herein within one week from this day, and this cause is set down for hearing on June 23, 1904, at ten o'clock A. M.

25 And afterwards, to wit, on the 23d day of June, A. D. 1904, there was filed in the Clerk's Office of said Court, in the above entitled cause, an Answer, same being in the words and figures following, to wit:

IN THE DISTRICT COURT OF THE UNITED STATES,

For the Northern District of Illinois.

In Admiralty.

No.

Erie Railroad Company,
Libelant,
vs.
Propeller "Conemaugh,"
her engines, etc.,
Respondent.
} Answer.

To the Honorable Christian C. Kohlsaat, Judge of the District Court of the United States for the Northern District of Illinois.

The answer of the Erie & Western Transportation Company, Claimant of the Propeller Conemaugh, her engines, boilers, boats, tackle, apparel and furniture, to the libel of the Erie Railroad against said propeller.

I. Respondent says that it is a corporation duly created and existing under and by virtue of the laws of the Commonwealth of Pennsylvania, and as such is now and at all times hereinafter mentioned was sole owner of the propeller Conemaugh, her engines,

boilers, boats, tackle, apparel and furniture, and as such owner it has claimed and bonded said propeller Conemaugh in this proceeding and has been admitted to defend.

II. Respondent admits the allegations of the First, Second, Third, Fourth, Fifth and Sixth Articles of said libel.

III. Respondent admits the seventh Article of said Libel and further answering said article says that the Union Steamboat
26 Company, in addition to setting up the damages suffered by the New York in its answer in said cause, on or about the 25th day of February, 1892, filed its cross-libel against the propeller Conemaugh claiming its said damage, and that said damage was adjudicated upon, and by the final decree referred to in said libel was paid by the Erie & Western Transportation Company in accordance with the course and practice in admiralty in cases of mutual fault.

IV. Respondent admits the allegations of Articles Eighth and Ninth of said libel.

V. Touching the allegations of Article Tenth of said libel, respondent admits that the said insurance companies named therein did intervene in said cause as insurers on cargo for a part of the damage claimed by the Erie & Western Transportation Company as Trustee, but says that said intervention was prior to the entry of final decree in said cause in the District Court, to wit, prior to July 3, 1896, and that by the decree entered on said last mentioned date the amounts found due on account of cargo damage indemnified by said intervening insurance companies named was decreed to be paid directly to them.

VI. Respondent admits the allegations of the Eleventh, Twelfth, Thirteenth, Fourteenth and Fifteenth Articles of said libel.

VII. Touching the allegations of Article Sixteenth of said libel, respondent says that it did apply to the Supreme Court of the United States for a writ of certiorari; that said writ was granted and the cause removed to the Supreme Court of the United States, was there heard and determined, and that the decision thereof was as reported in 175 United States Report, at p. 187: that the Court therein found both the propeller Conemaugh and New York at fault, and held that the damages to the steamers be divided.

27 VIII. Claimant admits the Seventeenth, Nineteenth, Twentieth, Twenty-first, Twenty-second and Twenty-third Articles of said libel.

IX. Answering the Twenty-fourth article of said libel, respondent admits that the Supreme Court of the United States affirmed the decree of March 24, 1900, of the District Court of the United States for the Eastern District of Michigan, and issued its mandate of

affirmance, but respondent denies that libelant, as successor to the Union Steamboat Company, was by execution compelled to pay the amount of said decree and interest thereon at seven per cent. (7) per annum, or any sum, and further answering said article says that the mandate referred to in said article was dated January 22, 1900; that on or about the 16th day of May, 1901, either the Union Steamboat Company or libelant paid to the four insurance companies mentioned in the Tenth, Eighteenth, and Nineteenth Articles of said libel the sums therein named and interest at seven per cent. (7%) per annum from July 3, 1896, until paid, but claimant is uninformed as to the exact date of the payment or the amount thereof. Respondent says that said insurance companies were insurers on cargo of the steamer "Conemaugh." which had been damaged in said collision, and as such had paid the loss sustained by the owners of said cargo by reason and in consequence of said collision.

And further answering said article, respondent says that while said cause was pending in the Supreme Court of the United States under writ of certiorari issued on petition of the Union Steamboat Company as in the Twenty-third Article alleged, the following named insurance campanies, also insurers on and paying damage to said cargo, to wit, The Manheim Insurance Company of Manheim, Germany; The Fireman's Fund Insurance Company of San Francisco; The London Assurance Corporation and The
28 British & Foreign Marine Insurance Company, on September 8, 1902, did intervene by leave of Court for the entire amount of damage to cargo ordered by the decree of July 3, 1896, to be paid to the Erie & Western Transportation Company, as Trustee, to wit, Nineteen Thousand, Six Hundred Twenty-seven and 61/100 Dollars ($19,627.61) and the interest thereon at the rate of seven per cent. (7%) per annum from July 3, 1896, until paid, predicating their intervention upon the claim therein assented to by all the parties that the said interventors were insurers upon cargo of the propeller Conemaugh and on account of which said sum was decreed to respondent as trustee, and as such insurers they paid to the owners of said cargo the amount of their loss by reason of said collision and subsequent sinking of the Propeller Conemaugh. That on or about the 25th day of May, 1903, either the Union Steamboat Company or libellant paid said sum of Nineteen Thousand, Six Hundred, Twenty-seven and 61/100 Dollars ($19,627.61), with the interest thereon at seven per cent. (7%) per annum from July 3, 1896, to said date of payment, in all the sum of Twenty-nine Thousand, One Hundred and 20/100 Dollars ($29,100.20), and that the whole of said sums was paid to the insurance companies which intervened as hereinbefore stated by reason of their having

as insurers paid the owners of the cargo of said propellor Conemaugh the loss to cargo on account of which recovery was made.

X. Touching the allegations of the Twenty-fifth and Twenty-sixth Articles of said libel, claimant denies the same and avers that the decree of March 24, 1900, of the District Court for the Eastern District of Michigan, was in accord with the mandate of the Supreme Court of the United States and was so held to be by the United States Circuit Court of Appeals for the Sixth Circuit in the cause referred to in the Twenty-second Article of
29 said libel, and by the Supreme Court of the United States on two separate hearings, as referred to in the Twentieth and Twenty-third Articles of said libel.

Further answering said articles of said libel, this respondent admits that there was paid by libellant or the Union Steamboat Company on account of loss of and damage to cargo of the Propeller Conemaugh the sums hereinbefore stated; that libelant was not permitted to recoup or offset one-half or any part of the amount so paid from or against the amount decreed to be paid to this claimant in the proceedings referred to in said libel, but respondent avers that the Union Steam-boat Company did demand relief on account of damage suffered by it in said collision; that such relief was granted and that libellant and the Union Steamboat Company has, in accordance with the course and practice of the admiralty in cases of mutual fault, had relief in said proceedings on account of its damage, and that if it failed to claim all the relief to which it might be entitled, it has waived its right to now make such claim, and to permit libelant to make a further claim by reason of any matter or thing growing out of said collision would be to permit the splitting of a single cause of action.

XI. Answering the Twenty-seventh Article of said libel, claimant admits that the Union Steamboat Company during the course of said proceedings in said libel mentioned, sought to have decreed against this claimant one-half the damage sustained by cargo, and to recoup against damage due respondent, but that the said District Court of the United States declined so to do, but did decree that the whole of said cargo damage should be paid by libellant in accordance with the mandate of the Supreme Court of the United States, and that the action of the said District
30 Court of the United States for the Eastern District of Michigan in that regard was affirmed by the Supreme Court of the United States and by the United States Circuit Court of Appeals for the Sixth Circuit, and again reaffirmed by the Supreme Court, as hereinbefore and in said libel shown, and respondent says that libelant's claim of right to recoup or recover one half or any part

of said sum so paid on account of damage to cargo from this respondent was denied in said proceedings by the Supreme Court of the United States, and this Court is without jurisdiction to review the action of said court.

XII. Respondent denies that libellant is entitled to recover from the propeller Conemaugh the sum of Nineteen Thousand, Seven Hundred, Thirty-four and 61/100 Dollars ($19,734.61), with interest thereon, or any other sum, and denies that any sum whatever is due to libellant, or that libelant has any cause of action whatsoever against the propeller Conemaugh.

XIII. Answering the Twenty-ninth Article of said libel, defendant denies that all and singular the premises are true, and says that the averments of said libel do not show facts which would create a lien against said propeller Conemaugh, and says the claim set up in said libel is not within the admiralty and maritime jurisdiction of this Honorable Court. And respondent further answering says the damage referred to in said libel has been adjudicated by a court of competent jurisdiction as in said libel shown, with full right, opportunity and obligation upon the Union Steamboat Company and libellant to present any and all claims or rights it had in reference thereto that libelant has had its day in court by its predecessor, the Union Steamboat Company, as to all claims
31 growing out of the disaster therein referred to; that the Union Steamboat Company presented and had adjudicated its claim against the propeller Conemaugh and this claimant, and in accordance with the course and practice of the admiralty courts of the United States in cases of mutual fault has received satisfaction of its claim so presented; that if libellant or the Union Steamboat Company for any reason neglected to or elected not to set up any claim or right or damage growing out of said disaster which it had or ought to have in the proceedings in said libel referred to, it has waived the same and is now estopped from asserting it.

XIV. And further answering said libel, respondent says that all and every part of the cargo of said propeller Conemaugh on account of which damage were allowed in the proceedings referred to in said libel and on account of which libellant or the Union Steamboat Company has made payment, was being transported under bills of lading containing the following agreement:

"Whenever any liability for loss of, or damage to, all or any of said property shall arise, that person or party, or vessel then engaged in the actual carriage or having custody of the property shall be deemed the carrier, and be solely liable for such loss or damage, (and the person or party liable who might sustain loss in

consequence of owning or chartering, or being interested in or as to such vessel, shall have any insurance, however affected, on, as to or covering the property lost or damaged and all benefit and advantage to be derived therefrom.

And respondent says that insurance against the perils which operated to the damage of said cargo of the Conemaugh and on account of which damages were awarded was affected, and paid to the full amount of said damage by the insurance companies which intervened in said cause and neither the owners of said cargo or libelant or any one claiming through or under them has any claim against the propeller Conemaugh, on which said cargo so damaged was being transported at the time, for damage to said cargo,
32 said damage as to it having been compensated in full by insurance. And further answering, respondent says that said contract of carriage under which said cargo on account of which damage has been paid by libelant or its predecessor, the Union Steamboat Company, was being transported, contained the following agreement:

"The said company shall not, nor shall any carrier, person or party, vessel or her master aforesaid, be liable in any case or event, unless written claim for the loss or damage shall be made to the person or party sought to be made liable, within thirty days, and the action in which said claim shall be sought to be enforced shall be brought within three months after said loss or damage occurs." And respondent says that no such written claim or other claim has been made upon this claimant by any of the owners of said cargo, or any one on their behalf, within the thirty days after the occurrence of said disaster, or at any time, and that no action was brought against it or its said steamer for said damage within three months after said damage occurred.

XV. And your respondent further avers that Section 15 of Chapter 83 of the laws of the State of Illinois provides:

"Action on unwritten contracts, express or implied, or on awards of arbitration, or to recover damages for an injury done to property, real or personal, or to recover the possession of personal property, or damages for the detention or conversion thereof, and all civil actions not otherwise provided for, shall be commenced within five years next after the cause of action accrued."

That more than twelve years have elapsed since the happening of the damage set up in said libel, and the same is barred by said statute.

XVI. That all and singular the premises are true.

Wherefore your respondent prays that this Honorable Court will be pleased to decree the dismissal of said libel, with costs to this

respondent, and such other and further relief as it may be entitled to receive in the premises.

33 THE ERIE & WESTERN TRANSPORTATION COMPANY,
by GOULDER, HOLDING & MASTEN,
its proctors, Respondent.

GOULDER, HOLDING & MASTEN,
Proctors for respondent.

Western District and State of New York, } ss.
County of Erie. }

E. T. Evans, being duly sworn, says that The Erie & Western Transportation Company is a corporation; that he is its Vice-President and duly authorized herein; that he has read the foregoing answer, and that the allegations and averments therein contained are true, as he verily believes.

E. T. EVANS.

Subscribed in my presence and sworn to before me by the said E. T. Evans, this 18th day of June, A. D. 1904.

EDWARD H. CHASE,
Notary Public.

[SEAL.]

(Endorsed) No. 9576. In the District Court of the United States for the Northern District of Illinois. In Admiralty. Erie Railroad Company, Libelant; vs. Propeller "Conemaugh," her engines, etc., Respondent. Answer. Filed June 23, 1904 at 9 o'clock A. M. T. C. MacMillan, Clerk. Goulder, Holding & Masten, Proctors for Respondent.

34 And afterwards, to wit, on the 23rd day of June, A. D. 1904, there was filed in the Clerk's Office of said Court, in the above entitled cause, a Stipulation, same being in the words and figures following, to wit:

IN THE DISTRICT COURT OF THE UNITED STATES,
For the Northern District of Illinois,
In Admiralty.

Erie Railroad Company,
Libelant,
vs.
Propeller Conemaugh, her engines, etc.,
Erie & Western Transportation Company,
Claimant.
} Stipulation.

It is hereby stipulated between the libelant and claimant as follows:

I. That libelant or claimant may use any part of the printed record or records or proceedings in the causes referred to in the libel in this cause without other verification than comparison, but subject to objection by other party on the ground of materiality, competency or relevancy.

II. That the goods composing the cargo of the propeller Conemaugh on account of loss and damage to which libelant or the Union Steamboat Company made payment as shown, were at the time of such loss or damage being transported on steamer Conemaugh under bills of lading containing terms of carriage, etc., as in Exhibit "A" herein attached, the blanks therein being filed to cover the various consignments.

III. That on the goods as aforesaid, insurance was effected by the owners thereof with the several companies named in the answer herein, insuring the same against the loss and damage referred to in said libel, and the said insurance companies, under the insurance so effected, became liable for and paid to the owners of said cargo the amount of the loss and damage so sustained.

IV. That none of the owners of the cargo which was lost or damaged in said collision, or the insurers thereon, made claim in writing or otherwise to or upon the propeller Conemaugh or the said Erie & Western Transportation Company, its owner, within thirty days after the occurrence of said damage or at all, or bring any action against the Propeller Conemaugh or her owner, the Erie & Western Transportation Company, for any loss or damage so sustained within three months after said loss or damage occurred or at all.

Subscribed this .....day of June A. D. 1904.

ERIE RAILROAD COMPANY,
By C. E. KREMER, *its Proctor.*
ERIE & WESTERN TRANSPORTATION COMPANY
by HARVEY D. GOULDER,
its Proctor.

36 B. L. Eng. Con't.

The Erie & Western Transportation Co.
Anchor Line, on Great Lakes.
Lake Connection of the Pennsylvania Railroad Company.
Via Erie or Buffalo, at Carrier's Option.

Shipped by..... the following described property in apparent good order, but weight, quality, value, contents and condition of contents unknown. To be carried or forwarded subject to all of the conditions hereinafter contained, to the Port of.....(with Liberty to the carrying ship to call at all intermediate ports), and thence by..... to the Port of.....(or so near thereto as ship may safely get, with the previlege of calling at any usual port of call), and to be delivered in like good order, subject to said conditions, unto.....
or to.....assigns (Notify.....)
upon payment immediately on discharge of the property, of the freight thereon, at the rate of.....Cents, American Gold, per one hundred pounds gross weight and advanced charges..... ($.....)
with all other charges and average as hereinafter provided, without any allowance of credit or discount; one pound sterling to be considered equal to $4.80 American Gold.

Form No. 12, Foreign—Steam.

	Principal Agencies.	Chicago,
	J. C. Evans, Agent,	Milwaukee,
	D. M. Brigham, Agent,	St. Paul,
	S. B. Gault, North-western Agent,	Minneapolis,
	C. A. Clawson, Agent,	Winona,
37	H. C. Shepard,	Winona,
	O. J. Geer, General Agent,	New York.
	T. C. Pollock, Agent,	
	L. N. Walton,	Philada.
	R. B. Glanville,	Baltimore.

Marks and Numbers.	Articles and Weight.
E Y L P P O M C A S	Said to Weigh.....

1st: In accepting this bill of lading, the Shipper, Owner and Consignee of the goods and the holder of the bill of lading agree to be bound by all of its stipulations, exceptions and conditions, whether written or printed, as fully as if they were all signed by such Shipper, Owner, Consignee, or Holder.

2d. The responsibility of each Carrier shall be limited to its own line.

3rd. The said Erie & Western Transportation Company, shall not, nor shall any carrier, or any person or party in possession of all or any of said property, or any vessel which received all or any of the said property or her master, be liable for any loss or damage sustained by any person or party, or for any loss of or damage to, all or any of the said property, arising from, caused by or connected with any one or more of the following mentioned causes or things, to wit: Any act of God, or a public enemy; any act or government or municipality, or any official act, any rebellion, insurrection, mob, riot, strike or combination, any peril, danger or accident of or incident to navigation or transportation, receipt or delivery, storage, or wharfage; any fire, collision, explosion of any kind, bursting or collapse of any boiler, pipe, chest, or flue, any latent defect, or any unseaworthiness or unfitness of or in any
38 vessel or other means of transportation not known to the person or party sought to be made liable; breakage or derangement of any machinery, decay, leakage, wastage, shortage of grain, breakage, wet, steam, combustion, heating, rust, dirt, frost or freezing, rubbing or chafing, contact with or nearness to other property, detention, delay, seizure, under legal process, loss or decrease of weight or quantity, change of weather, transshipment, loading or unloading, lighterage improper packing, bailing, or cooperage; any change in market value, any act or thing herein permitted; nor shall there be any liability on the part of said Company, or any carrier, person or party, vessel or her master aforesaid, or on the part of any other vessel owned, chartered, or used by said Company, or her owner or master, for any loss or damage herein mentioned, unless the same shall affirmatively, and without presumption, be proven to have been caused by the negligence of the person, party or vessel sought to be made liable, nor even if caused by any such negligence, for any loss of or damage to any statue, picture, goldware, silverware, plated ware, coin, bullion, jewel or watch, unless special contract for the transportation thereof other than this be made by special written authority from this Company, nor shall there be any liability for or on account of any wrong or mistaken carriage or delivery of, or failure to deliver, any property marked, consigned or addressed improperly or indefinitely,

June or in initials, characters or numbers; nor in case of alteration or erasure in this instrument shall there be any liability aforesaid, which would not have existed had such alteration or erasure not been made. Non-compliance with any ordinance or bylaw shall not be deemed negligence or evidence of negligence. Whenever any liability for loss of, or damage to, all or any of said property shall arise that person or party, or vessel then engaged in actual carriage or having custody of the property shall be deemed the carrier, and be solely liable for such loss or damage; and the person or party liable, or who might sustain loss in consequence of owning, chartering or being interested in or as to such vessel, shall have
39 any insurance, however effected, on, as to or covering the property lost or damaged and all benefit and advantage to be derived therefrom and at the option of such person or party, all amounts of such loss or damage shall be computed on the basis of the value of the property at the place above provided for its delivery, or at its cost at the time and place of its above mentioned receipt. The said Company shall not, nor shall any carrier, person or party, vessel or her master aforesaid, be liable in any case or event, unless written claim for the loss or damage shall be made to the person or party, sought to be made liable, within thirty days, and the action in which said claim shall be sought to be enforced shall be brought within three months, after the said loss or damage occurs. Any vessel having all or any of said property on board, may tow or be towed, and may save or aid, or attempt to save or aid, life, person or property, and may delay or deviate for, or with a view to any such purpose, or for, or with a view to, any purpose connected with her navigation or business. General average payable according to Lake custom. All weights shall, at the option of any carrier, be determined by said carrier's scales; and all weights furnished to any carrier shall be subject to correction. If any nitroglycerine, gunpowder, friction matches, fireworks, or other explosive, or if any property, the carriage of which is prohibited by law, shall be received without knowledge as to its nature, and written assent to its carriage, by the receiver or carrier thereof, the same may, without notice of any kind, be destroyed, without liability therefor, or, at the option of the carrier, may be removed and stored, at the sole risk and expense of the owner.

4th: As to The Erie and Western Transportation Company, this contracy is executed and accomplished, and all liability hereunder terminates on the delivery of the said property to the steamship, her master, agent or servants, or to the steamship company, or on the steamship pier at the port of.....

.....The said The Erie & Western Trans- Stip
40 portation Company shall not, nor shall any of its connections, fa
inland or ocean, be liable for delay, nor in any other respect than as warehousemen, while the said property remains on wharf waiting for further conveyance.

It is also stipulated that in case the whole or any part of the articles specified herein be prevented by any cause from going in the first steamer of the line above stated leaving, after the arrival of such articles at said Port the said The Erie & Western Transportation Company, the Steamship Company, Steamer or owner is at liberty to forward them by succeeding steamers of said line, or, if deemed necessary, in the steamers of any other line.

5th: In respect to the service after delivery by The Erie & Western Transportation Company, at the port as aforesaid it is mutually agreed as to the Steamship Company, Steamer, Owner, and all other parties undertaking, any part of said service as follows: The ship shall have liberty to sail without pilots; to tow and assist other vessels in distress; to deviate for the purpose of saving life or property; that the carrier shall have liberty to convey goods in lighters to and from the ship at the risk of the owners of the goods; and, in case the ship shall put into a port of refuge, or be prevented from any cause from proceeding in the ordinary course of her voyage, to tranship the goods to their destination by any other steamship. General average payable according to York Antwerp Rules of 1890.

It is also mutually agreed that the Steamship Company, Steamer or owner shall not be liable for loss or damage occasioned by causes beyond his control, by the perils of the sea or other waters, by fire from any cause and wheresoever occurring; by barratry of the master or crew, by enemies, pirates or robbers, by arrest and restraint of princes, rulers, or people, riots, strikes or stoppage
41 of labor by explosion, bursting of boilers, breakage of shafts, or any latent defect in hull, machinery or appurtenances, by collisions, stranding, or other accidents of navigation of whatsoever kind (even when occasioned by the negligence, default or error in judgment of the pilot, master mariners or other servants of the ship-owner, not resulting, however, in any case, from want of due diligence by the owners of the ship or any of them, or by the ship's husband or manager); nor for heating, decay, putrifaction, rust, sweat, change of character, drainage, leakage, breakage, or any loss or damage arising from the nature of the goods or of the insufficiency of packages nor for land damage; nor for the obliteration, errors, insufficiency or absence of marks, numbers, address or description; nor for risk of craft, hulk or transhipments; nor for any loss or damage caused by the prolongation of the voyage.

June I. It is also mutually agreed that the carrier shall not be liable for gold, silver, bullion, specie, documents, jewelry, pictures, embroideries, perfumeries, works of art, silks, furs, china porcelain, watches or clocks, in any respect, or for goods of any description whatever above the value of $20.00 per cubic foot, and in no case is the carrier to be liable beyond $500.00 per package unless bills of lading are signed therefor with the value therein expressed and a special agreement is made.

II. Also that shippers shall be liable for any loss or damage to ship or cargo caused by inflamable, explosive or dangerous goods, shipped without full disclosure of their nature whether such shipper be principal or agent; and such goods may be thrown overboard or destroyed at any time without compensation.

III. Also, that the carrier shall have a lien on the goods for all freights, primages and charges, and also for fines or damages which the ship or cargo may incur or suffer by reason of the incorrect or insufficient marking, numbering or addressing of packages or description of their contents.

IV. Also, that in case the ship shall be prevented from
42 reaching her destination by quarantine, the carrier may discharge the goods into any depot or lazaretto, and such discharge shall be deemed a final delivery under this contract, and all the expenses thereby incurred on the goods shall be a lien thereon.

V. Also, that the ship may commence discharge immediately on arrival and discharge continuously, the Collector of the Port being hereby authorized to grant a general order for discharge immediately on arrival, and upon discharge the goods shall be at the risk of the consignee. And if not taken by him within such time as is provided by the regulations of the port of discharge, they may be stored by the carrier at the expense and risk of their owners, and the responsibility of the steamship or steamship line for merchandise to be carried at a through rate to a point beyond the port of discharge shall terminate on the delivery of the goods or property to the next carrier.

VI. Also that full freight is payable on damaged or unsound goods; but no freight is due on any increase in bulk or weight caused by the absorption of water during the voyage.

VII. Also, that if on sale of the goods at destination for freight and charges, the proceeds fail to cover said freight and charges, the carrier shall be entitled to recover the difference from the shipper.

VIII. Also, in the event of claims for short delivery when the ship reaches her destination, the price shall be the market price at the port of destination on the day of the ship's entry at the Custom House, less all charges saved, except a lower value of the articles has

been agreed upon with the shippers, and such value noted s
hereon.

43 IX. Also, freight payable on weight, is to be paid on gross weight discharged or landed from ocean steamship, unless otherwise agreed.

X. Also, goods destined for a Continental port, in the event of the Continental steamer being prevented by ice from reaching destined port, the Master reserves the liberty of either landing cargo at nearest open port he can reach with safety, or bringing it back to port of transshipment, in either case at consignees' risk and expense, but charging outward freight only; or, should the last steamer of the season have sailed for the above destined port, the goods may be sent to the port nearest to their destination with which there is direct communication, or may be warehoused at the intermediate port at the expense and risk of the owners of the goods.

XI. Parcels for different consignees collected or made up in single packages addressed to one consignee to pay full freight on each parcel.

XII. Also, that the property covered by this Bill of Lading is subject to all the conditions expressed in the customary forms of Bills of Lading in use by the ocean steamer of Ocean Steamship Company at the time of shipment.

Attention of shippers is called to the act of Congress of 1851. "Any person or persons shipping Oil of Vitriol, Unslaked Lime, Inflamable Matches, or Gunpowder, in a ship or vessel taking cargo for divers persons on freight, without delivering at the time of shipment a note in writing, expressing the nature and character of such merchandise, to the master, mate, or officer or person in charge of the loading of the ship or vessel, shall forfeit to the United States One Thousand Dollars."

In Witness Whereof, The Agent signing on behalf of the said The Erie & Western Transportation Company, and of the said Ocean Steamship Company, or Ocean Steamer and her Owner, severally

44 and not jointly, hath affirmed to.....Bills of Lading, all of this tenor and date, one of which Bills being accomplished and given up to the carrier, the others to stand void.

Dated in.....this.....day of.....189....

.....Agent.

(Endorsed) 9576. In the District Court of the United States for the Northern District of Illinois. In Admiralty. Erie Railroad Company vs. Propeller Conemaugh, etc. Filed June 23, 1904. T. C. MacMillan, Clerk. Stipulation. Goulder, Holding & Masten, Proctors for Respondent.

23. 45 And afterwards, to wit, on the 23d day of June, A. D. 1904, the following order was had and entered of record, in said cause, before the Hon. Christian C. Kohlsaat, Judge, to wit:

Erie Railroad Company
9576. vs.
Propeller Conemaugh

This cause coming on for trial, come the parties by their proctors and the Court having heard the libel and answer and stipulation of facts and arguments of counsel and not being sufficiently advised in the premises takes the cause under advisement.

11. 46 And afterwards, to wit, on the 11th day of August, A. D. 1904, the following order was had and entered of record in said cause. before the Hon. Christian C. Kohlsaat, Judge, to wit:

Erie Railroad Company
9576. vs.
Steamer "Conemaugh."

At a stated term of the District Court, of the United States of America for the Northern District of Illinois, held at the Court Room in the Federal Building in the City of Chicago, on the 11th day of August, A. D. 1904, present the Honorable Christian C. Kohlsaat, District Judge. This cause having been heard on the pleadings and proofs and argued and submitted by the advocates of the respective parties, and due deliberation having been had in the premises, it is now Ordered, Adjudged and Decreed by the Court that the libelant above named recover herein against the Steamer "Conemaugh" the damages sustained by the libellant by reason of the matters set forth in the libel herein together with costs.

47 And afterwards, to wit, on the 24th day of August, A. D. 1904, there was filed in the Clerk's Office of said Court, in the above entiled cause, a Stipulation as to damages, same being in the words and figures following, to wit:

IN THE DISTRICT COURT OF THE UNITED STATES, s

For the Northern District of Illinois.

Erie Railroad Company,
vs.
Steamer Conemaugh. } Statement of Damages.

Amount decreed insurers on cargo intervening in District Court, with interest at 7% to May 16, 1901, date of payment,	$26566.19	
One-half of this,		$13283.09
Amount decreed for insurers on cargo intervening in Supreme Court, with interest at 7% to June 9, 1903, when same was paid,	$29100.29	
One-half of this,		$14550.10
		$27833.19

August 22, 1904.

C. E. KREMER,
Proctor for Erie Railroad Company.
GOULDER, HOLDING & MASTEN,
Proctors for Erie & Western Transportation Company.

(Endorsed) 9576. District Court of the United States for the Northern District of Illinois. In Admiralty. Erie Railroad, Libelant vs. The Conemaugh, etc.

48 Stipulation as to damages. Filed Aug. 24, 1904. T. C. MacMillan, Clerk.

49 And afterwards, to wit, on the 24th day of August, A. D. 1904, the following order was had and entered of record in said cause, before the Hon. Christian C. Kohlsaat, to wit;

Erie Railroad Company,
9576. vs.
Steamer Conemaugh.

An interlocutory decree having heretofore been made and entered herein whereby it was adjudged that the libelant recover the damages sustained by reason of the matters and things in its libel set forth against the Steamer Conemaugh, her engines, etc., and the amount of the said damages, including the interest, having been fixed by stipulation on file, at the sum of $27833.19, it is

Ordered, Adjndged and Decreed that the libellant, the Erie Railroad Company, recover herein against the steamer Conemaugh, her engines, etc., the sum of $27833.19 and interest at 5% from Dec. 10, 1903, amounting to $28815.00, and that the Erie & Western Transportation Company, claimant of the said Steamer Conemaugh, and Bankers Surety Company pay into Court or to the proctors for the libellant, the damages and interest aforesaid, and that in default thereof the libellant may have execution therefor.

And it is also decreed that the libelant recover from the said Erie & Western Transportation Company and its surety, its costs taxed in this cause and amounting to the sum of $43.10 and that in default thereof, execution may issue therefor, to the entry of which decree said Erie & Western Transportation Company by its proctors duly excepts and enters its motion for an appeal.

50 And afterwards, to wit, on the 25th day of October, A. D. 1904, there was filed in the Clerk's Office of said Court, in the above entitled cause, a Petition for appeal, same being in the words and figures following, to wit:

IN THE DISTRICT COURT OF THE UNITED STATES,

For the Northern District of Illinois.

In Admiralty.

Erie Railroad Company,
Libelant;
vs.
Propeller "Conemaugh," her engines, etc.,
Erie & Western Transportation Company,
Claimant and Respondent.
} No.

To the Honorable Christian C. Kohlsaat, Judge of the District Court of the United States for the Northern District of Illinois.

And now by its proctors, Messrs. Goulder, Holding & Masten, comes the Erie & Western Transportation Company, respondent in the above entitled cause, and, having filed with the clerk of said District Court an assignment of error, prays this Honorable Court to allow an appeal to the United States Circuit Court of Appeals for the Seventh Circuit from the final decree of the District Court in the above entitled cause, entered on the 24th day of August, 1904.

Dated this 24th day of October, 1904.

GOULDER, HOLDING & MASTEN,
Proctors for Respondents.

(Endorsed) No. 9576. In the District Court of the United States for the Northern District of Illinois. In Admiralty. Erie Railroad Company, Libelant; vs. Propeller "Conemaugh," her engines, etc., Erie & Western Transportation Company, Claimant & 51 Respondent. Petition for Appeal. Filed Oct. 25, 1904. T. C. MacMillan, Clerk. Goulder, Holding & Masten, Proctors for Respondent.

52 And afterwards, to wit, on the 25th day of October, A. D. 1904, there was filed in the Clerk's Office of said Court, in the above entitled cause, an Assignment of Errors, same being in the words and figures following, to wit:

IN THE DISTRICT COURT OF THE UNITED STATES,

For the Northern District of Illinois.

In Admiralty.

No.

Erie Railroad Company,
Libelant;
vs.
Propeller "Conemaugh," her engines, etc., Erie & Western Transportation Company,
Claimant and Respondent.

And now comes respondent, the Erie & Western Transportation Company, by Goulder, Holding & Masten, its proctors, and says that in the record and proceedings in this cause, and in the final decree entered therein, there is error in the following, among other things, to wit:

I. That the Court erred in overruling respondent's first exception, viz: That the allegations of said libel do not disclose any admiralty or maritime claim or lien upon said propeller Conemaugh.

II. That the court erred in overruling respondent's second exception, viz: Because it appears from said libel that the Union Steamboat Compnay, under the course and practice of the admiralty courts of the United States, has already had its day in Court for all damages arising from or consequent upon the collision referred to therein, has had its claim directly adjudicated upon with all the parties before the court, and the same is
53 res adjudicata.

III. That the Court erred in overruling respondent's third exception, viz: Because it appears from said libel that the Union Steamboat Company has already presented to a court of competent jurisdiction a claim of damage by reason of the collision set up in said libel, that the same has been adjudicated upon and paid by this claimant in accordance with the course and practice of the admiralty courts of the United States in cases of mutual fault, and to permit libelant to maintain this action would be to permit the splitting of a single cause of action.

IV. That the Court erred in overruling respondent's fourth exception, viz: Because libellant by its predecessor in ownership of the propeller New York has already had its day in a Court of

competent jurisdiction, has presented its claim had it adjudicated upon and has received payment, according to the course and practice of admiralty courts of the United States in cases of mutual fault, on account of damage sustained by it by reason of the collision set up in said libel, with full right and opportunity and obligation to present all matters arising from or in consequence of said disaster, and if it failed to set up and claim any damage or right growing out of said collision, it is estopped from now presenting it.

V. The court erred in holding that the claim presented by the libel is within the admiralty and maritime jurisdiction of the court.

VI. The court erred in entering decree in excess of the amount claimed in the libel.

VII. The Court erred in decreeing that libellant was entitled to recover the sum of Twenty-eight Thousand Eight Hundred and Fifteen Dollars ($28,815), or any sum.

54 VIII. The Court erred in not dismissing the libel.

GOULDER, HOLDING & MASTEN,
Proctors for Respondent
THE ERIE & WESTERN TRANSPORTATION COMPANY.

(Endorsed) No. 9576. In the District Court of the United States for the Northern District of Illinois. In Admiralty. Erie Railroad Company, Libelant; vs. Propeller "Conemaugh," her engines, etc., Erie & Western Transportation Company, Claimant and Respondent. Assignment of Errors. Filed Oct. 25. 1904. T. C. MacMillan, Clerk. Goulder, Holding & Mastedn, Proctors for Respondent, the Erie & Western Transportation Company.

55 And afterwards, to wit, on the 25th day of October, A. D. 1904, there was filed in the Clerk's Office of said Court, in the above entitled cause, a Bond on Appeal, same being in the words and figures following, to wit:

IN THE DISTRICT COURT OF THE UNITED STATES,

For the Northern District of Illinois,

In Admiralty.

No.

Erie Railroad Company,
Libelant;
vs.
Propeller "Conemaugh," her engines, etc., Erie & Western Transportation Company,
Claimant and Respondent.
} Bond

Know All Men by These Presents that we, the Erie & Western Transportation Company, as principal, and The Bankers Surety Company, of Cleveland, Ohio, as surety, are held and firmly bound unto the Erie Railroad Company in the full and just sum of Four Thousand ($4,000) Dollars, to be paid to the said Erie Railroad Company, its successors or assigns, to which payment, well and truly to be made, we bind ourselves, our successors and assigns, jointly and severally, by these presents.

Executed and dated this 24th day of October, 1904.

Whereas the above named Erie & Western Transportation Company has appealed to the United States Circuit Court of Appeals for the Seventh Circuit from a decree in favor of the above named libelant made and entered on the 24th day of August, 1904, in the above entitled action, by the District Court of the United States for the Northern District of Illinois, praying that said decree may be reversed.

Now, Therefore, the condition of this obligation is such that if the above named appellant shall prosecute its appeal to effect, and shall answer all damages and costs if it fails to make its appeal good, then this obligation shall be void; otherwise the same shall remain in full force and effect.

In Witness Whereof the parties have hereunto caused their cor-

porate names to be subscribed and their corporate seals to be affixed, the day and year above written. Bond filed 190

(Seal) THE ERIE & WESTERN TRANSPORTATION COMPANY,

By FRANK J. FIRTH,
President.

Attest: FRANK STALEY,
Secretary.

56 THE BANKERS' SURETY COMPANY,
W. P. JOHNSON,
Vice President.

Attest: HOWARD H. BURGES,
(Seal) *Secretary.*

The above bond on appeal approved.
Oct. 25, 1904,

KOHLSAAT,
Judge.

(Endorsed) 9576. District Court U. S. Northern Dist. of Illinois. Erie Railroad Co. vs. Pro. "Conemaugh" et al. Bond on Appeal. Filed Oct. 25, 1904. T. C. MacMillan, Clerk.

57 And afterwards, to wit, on the 25th day of October, A. D. 1904, the following order was had and entered of record, in said cause, before the Hon. Christian C. Kohlsaat, Judge, to wit: Order 190 app

Erie Railroad Company,
Libellant,
9576. vs.
Propeller "Conemaugh," her engines, etc.,
Erie & Western Transportation Company,
Claimant and Respondent.

On petition of the Erie & Western Transportation Company, the above named Respondent, praying for the allowance of Appeal in the above entitled cause to the United States Circuit Court of Appeals for the Seventh Circuit, it appearing to the Court that the said respondent has filed its assignment of errors as required by the rules of the United States Circuit Court of Appeals for the Seventh Circuit, which are accepted, it is—

Ordered that the said appeal be, and the same is allowed; and it is further—

Ordered that the bond on appeal be and the same is hereby fixed in the sum of Four Thousand Dollars ($4,000.00).

58 IN THE DISTRICT COURT OF THE UNITED STATES,

For the Northern District of Illinois,

Northern Division.

I, T. C. MacMillan, Clerk of the District Court of the United States for the Northern District of Illinois, Do Hereby Certify the above and foregoing to be a true and correct transcript of the record in Case No. 8576, In Admiralty, in which The Erie Railroad Company is Libellant, and the Propeller "Conemaugh" is Respondent, as the same appears from the records and files in said case now remaining in my custody and control.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court at Chicago, in said District, this 19th day of November, A. D. 1904.

T. C. MACMILLAN,
Clerk.

(Seal)

Cost of transcript $20.00.

T .C. MACMILLAN,
Clerk.

59 United States of America } ss.

The President of the United States to the Erie Railroad Company and C. E. Kremer, its Proctor, Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Seventh Circuit to be holden in Chicago, within thirty days from the date hereof pursuant to an appeal filed in the Clerk's office of the District Court of the United States for the Northern District of Illinois, Northern Division, wherein the Erie & Western Transportation Company, a corporation, is appellant, and you are appellee, to show cause, if any there be, why the decree rendered against the said appellant as in the said appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Christian C. Kohlsaat, Judge of the said District Court of the United States this 25th day of October, in the year of our Lord one thousand nine hundred and four.

KOHLSAAT,
Judge.

Service of above notice and citation accepted this 25th day of October, 1904.

.....
Proctor for Erie Railroad Company.

I have served this writ within my District upon the within named Erie Railroad Company by reading the same to and in the presence and hearing of S. P. Shane, Freight Traffic manager, at the same time delivering to him personally a true copy thereof on the 31st day of October, A. D. 1904.

I was unable to find any other officer of the said Company within my district.

JOHN C. AMES,
U. S. Marshall.
by WM. E. CASS,
Deputy.

1 Service 2.00
1 Mile .06

$2.06

IN THE DISTRICT COURT OF THE UNITED STATES;

For the Northern District of Illinois:

Erie R. R. Co.
v.
Propeller Conemaugh. } In Admiralty. No. 9576.

KOHLSAAT, *J.*

On November 11, 1891, the owners of the defendant brought suit to recover damages sustained by defendant in collision with the Propeller New York owned then by the Union Steamboat Co. to which ownership libellant herein has succeeded, and also to recover as trustee for the owners or underwriters of the cargo.

The New York, being for the purposes hereof, the libellant herein, filed a cross libel for damages sustained by her. The District Court held the New York to be alone in fault. On appeal the Circuit Court of Appeals for the Sixth Circuit reversed the finding and held the respondent herein to be alone in fault. On certiorari the Supreme Court held both vessels in fault and decided that the New York must pay the full damages of the cargo owners or their intervening representatives. On receiving the mandate, the District Court entered a decree in favor of the Conemaugh to the effect that the intervenors and the Conemaugh as trustee for cargo owners recover the full amount of the damages against the New York and at the same time refused to permit the New York to recoup or off set any damages except such as was sustained by the propeller, New York. On appeal from this decree the Court of Appeals affirmed the same and in its opinion stated that the right of set off, counter-claim or recoupment, being in no way set up in the pleadings the appellant, not being obliged to assert such claim for contribution by way of recoupment in that cause, were left "free to assert their claim for contribution in an independent proceeding against the Conemaugh. No special equity appearing, this will be no injustice. The motion to remand, with leave to amend the pleadings is therefore denied." The cause was again taken to the Supreme Court by certiorari and affirmed, the court stating in its opinion that "The New York having been in

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fault, was responsible to the cargo and if, as between her and the Conemaugh, she have a claim for recoupment, the way is open to recover it."

This proceeding is instituted in accordance with the suggestion of the said Circuit Court of Appeals and the Supreme Court, for contribution. The main contention here is as to whether the rights of libellant are based upon the doctrine of subrogation or that of contribution. The Conemaugh had a good defense as against claims of the cargo owners and other intervenors and seeks to interpose that fact as a defense to any attempt on the part of libellant herein to recover from her any part of the cargo damages.

If the libellant was complelled to pay damages for cargo losses, by reason of negligence to which the Conemaugh contributed, as was held by the Supreme Court, then it is of no consequence whether the Conemaugh was liable to her cargo owners or not, and she must be held to be liable for one half of the damages caused by her negligence jointly with that of the libellant. She had no such contractual relations with libellant. If the right of recovery rests wholly upon the doctrine of subrogation, then libellants claim would be disallowed. It cannot be that the court of appeals and the Supreme Court meant to decide that libellant herein should be denied the right to save its rights under the Statute of Limitations by amendment and be remitted to a barren attempt to assert them in a separate proceeding which would be barred by the statute. If, however, the right of recovery is based upon the doctrine of contribution, then libellant's demands are not out-lawed. This seems to me to be the reasonable construction to be placed upon the decisions of the upper court.

Libellant may present a draft of a decree in accordance herewith.

IN THE UNITED STATES DISTRICT COURT,

Northern District of Illinois,

Northern Division.

I, T. C. MacMillan, Clerk of the District Court of the United States of America for the Northern District of Illinois, do hereby certify the above and foregoing to be a true and correct copy of the opinion of the Court in cause numbered 9576 entitled Erie R. R. Co. vs. Propeller Conemaugh as same appears from the original filed in said Court on the 24th day of August A. D. 1904, and now remaining in my custody and control.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court at my office in Chicago, in said District, this ninth day of December A. D. 1904.

T. C. MACMILLAN,
Clerk.

(Seal)

IN THE UNITED STATES CIRCUIT COURT OF APPEALS,

For the Seventh Circuit,

October Term, A. D. 1904.

Erie & Western Transportation Company,
Appellant,
vs.
Erie Railroad Company,
Appellee.

It is hereby stipulated and agreed by and between the proctors for the respective parties to the above cause that the foregoing is a true copy of the opinion of the Judge of the District Court in the above cause, and that the same, together with this stipulation, may be filed in said cause and printed by the Clerk and attached to the printed transcript of record now on file.

HARVEY D. GOULDER,
Proctor for Appellant.
C. E. KREMER,
W. O. JOHNSON,
Proctors for Appellee.

IN THE CIRCUIT COURT OF APPEALS,

Seventh Circuit.

Erie & Western Transportation Company,
Appellant,
vs.
Erie Railroad Company,
Appellee.
} No. 1137.

Upon stipulation of the parties, it is hereby ordered that leave be and hereby is given to file in said cause instanter an authenticated copy of the opinion of the Judge of the District Court in said cause, and the Clerk of this Court is hereby authorized and directed to print the same, together with the stipulation of the parties with reference thereto, and attach the same to the printed transcript of record heretofore filed in said cause.

(Endorsed) Filed Dec 12 1904 Edward M. Holloway, Clerk.

UNITED STATES CIRCUIT COURT OF APPEALS.
For the Seventh Circuit.

I, EDWARD M. HOLLOWAY, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages, numbered from 1 to 46, inclusive, contain a true copy of the printed record filed in this court on the third day of December, 1904, which was prepared for the printer, indexed, supervised and distributed by me in accordance with the rules of this court and upon which the cause was determined by the United States Circuit Court of Appeals for the Seventh Circuit, in the case of *Erie & Western Transportation Company* v. *Erie Railroad Company,* No. 1137, October Term, 1904, as the same remains on the files and records of the United States Circuit Court of Appeals, for the Seventh Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this twenty-ninth day of September, A. D. 1905.

EDWARD M. HOLLOWAY,
Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.

[SEAL]

At a regular term of the United States Circuit Court of Appeals for the Seventh Circuit, begun and held at the United States court-rooms, in the City of Chicago in said Seventh Circuit, on the fourth day of October, 1904, of the October term in the year of our Lord, one thousand nine hundred and four, and of our Independence the one hundred and twenty-ninth.

And afterwards, to-wit: On the twenty-second day of November, 1904, in the October term last aforesaid, came the appellant, by its counsel, Mr. Harvey D. Goulder, and filed in the office of the clerk of this court his appearance, which appearance is in the words and figures following, to-wit:

UNITED STATES CIRCUIT COURT OF APPEALS.
For the Seventh Circuit.

No. 1137. October Term, 1904.

Erie and Western Transportation Company,
vs.
Erie Railroad Company,

The Clerk will enter my appearance as counsel for the appellant.

HARVEY D. GOULDER,
Cleveland, Ohio.

Endorsed: Filed November 22, 1904.

EDWARD M. HOLLOWAY,
Clerk.

And afterwards, to-wit: On the thirtieth day of November, 1904, in the October term last aforesaid, came the appellee, by its counsel, Mr. C. E. Kremer and Mr. W. O. Johnson, and filed in the office of the clerk of this court their appearance, which appearance is in the words and figures following, to-wit:

UNITED STATES CIRCUIT COURT OF APPEALS.
For the Seventh Circuit.

No. 1137. October Term, 1904.

Erie and Western Transportation Company,
Appellant,
vs.
Erie Railroad Company.

The Clerk will enter my appearance as counsel for the appellee.

C. E. KREMER,
W. O. JOHNSON.

Endorsed: Filed November 30, 1904.

EDWARD M. HOLLOWAY,
Clerk.

And afterwards, to-wit: On the third day of January, 1905, in the October term last aforesaid, the following further proceedings were had and entered of record, to-wit:

Tuesday, January 3, 1905.

Court met pursuant to adjournment.

Present:

Hon. James G. Jenkins, Circuit Judge, presiding.
Hon. Peter S. Grosscup, Circuit Judge.
Hon. Francis E. Baker, Circuit Judge.

Erie and Western Transportation Company,
1137
vs.
Erie Railroad Company,

Appeal from the District Court of the United States for the Northern District of Illinois, Northern Division.

It is ordered by the court that this cause be, and the same is hereby set down for hearing January 31, 1905.

And afterwards, to-wit: On the thirty-first day of January, 1905, in the October term last aforesaid, the following further proceedings were had and entered of record, to-wit:

Tuesday, January 31, 1905.

Court met pursuant to adjournment.

Present:

Hon. James G. Jenkins, Circuit Judge, presiding.
Hon. Peter S. Grosscup, Circuit Judge.
Hon. Francis E. Baker, Circuit Judge.

Erie and Western Transportation Company, 1137 *vs.* Erie Railroad Company,	Appeal from the District Court of the United States for the Northern District of Illinois, Northern Division.

It is ordered by the court that this cause be, and the same is hereby set for hearing on the third day of the April session of the October term, 1904.

And afterwards, to-wit: On the eleventh day of April, 1905, in the October term last aforesaid, the following further proceedings were had and entered of record, to-wit:

Tuesday, April 11, 1905.

Court met pursuant to adjournment.

Before:

Hon. Peter S. Grosscup, Circuit Judge, presiding.
Hon. Francis E. Baker, Circuit Judge.
Hon. William H. Seaman, Circuit Judge.

Erie and Western Transportation Company, 1137 *vs.* Erie Railroad Company,	Appeal from the District Court of the United States for the Northern District of Illinois, Northern Division.

It is ordered by the court that this cause be, and the same is hereby set down for hearing April 14, 1905.

And afterwards, to-wit: On the fourteenth day of April, 1905, in the October term last aforesaid, the following further proceedings were had and entered of record, to-wit:

Friday, April 14, 1905.

Court met pursuant to adjournment.

Present:

Hon. Peter S. Grosscup, Circuit Judge, presiding.
Hon. Francis E. Baker, Circuit Judge.
Hon. William H. Seaman, Circuit Judge.

Erie and Western Transportation Company,
1137
vs.
Erie Railroad Company,

} Appeal from the District Court of the United States for the Northern District of Illinois, Northern Division.

Now this day come the parties by their counsel and this cause now comes on to be heard on the printed record and briefs of counsel and on oral argument by Mr. Harvey D. Goulder and Mr. Frank S. Masten, counsel for appellant, and by Mr. C. E. Kremer, counsel for appellee, and the court having heard the same takes this matter under advisement.

And afterwards, to-wit: On the first day of August, 1905, in the October term last aforesaid, there was filed in the office of the clerk of this court the opinion of the court in the above entitled cause, which opinion is in the words and figures following, to-wit:

IN THE
UNITED STATES CIRCUIT COURT OF APPEALS.
For the Seventh Circuit.

No. 1137. October Term, 1904. April Session, 1905.

Erie & Western Transportation Company,
Appellant,
vs.
Erie Railroad Company.

} Appeal from the District Court of the United States for the Northern District of Illinois.

Before GROSSCUP, BAKER and SEAMAN, *Circuit Judges.*

This appeal is from a decree of the District Court, sitting in admiralty, in favor of the appellee, Erie Railroad Company, as libellant, for recovery of $28,815.00, against the steamer Conemaugh and the appellant Erie & Western Transportation Company, as claimant. The libel is in rem and propounds, in effect, that Erie Railroad Company is successor in interest to Union Steamboat Company, as owner of the propeller New York; that a collision occurred October 21, 1891, between the propellers New York and Conemaugh, resulting in the sinking of the Conemaugh; that proceedings thereupon arose in admiralty (which are detailed) wherein it was ultimately adjudicated that both vessels were at fault for the collision and each was liable for a moiety of the damages which ensued; that the final decree therein condemned the New York to pay the entire damage of the Conemaugh's cargo, without recoupment or allowance for one-half thereof chargeable to the Conemaugh, because no pleading was filed demanding such recoupment; that the libellant accordingly overpaid $19,734.61 which should have been borne by the Conemaugh and her owners, and was thus "relegated to its separate remedy against the Conemaugh"; and it is entitled to and prays recovery for such amount and interest thereon.

The prior proceedings in admiralty upon which the libel and decree rest the right of recovery are notable for their course and duration, and a summary is needful for understanding of the theory on which recovery was sought and allowed. As the appellant's brief well and concisely recites these facts (approved on behalf of the appellee as "substantially correct") such recital is incorporated in this statement, as follows:

"On the 21st day of October, 1891, a collision occurred in the Detroit River between the propellers New York, owned by the ap-

pellee's predecessor, the Union Steamboat Company, and the Conemaugh, owned by the appellant. The collision resulted in the sinking of the Conemaugh with great damage to her cargo of miscellaneous package freight, and in some small damage to the New York.

"November 11, 1891, appellant, as owner of the Conemaugh and bailee of her cargo, filed libel in the United States District Court for the Eastern District of Michigan against the New York. The Union Steamboat Company answered for the New York, denying all liability, and attributing the disaster solely to the fault of the Conemaugh; also setting up the damage sustained by the New York as about $3,000. Subsequently the Union Steamboat Company filed a cross libel for the physical damage to the New York, but no process was issued and [illegible]ree dismissing the cross libel was not appealed from by the U[illegible]mboat Company.

"On hearing [illegible]eamers were held at fault: 53 Fed. 553. Rehearing was had, resulting in the New York being held solely in fault. At this stage, the British and Foreign Marine Insurance Company, Limited, the Insurance Company of North America, the Union Insurance Company, and the Marine Insurance Company, as insurers on parts of the Conemaugh's cargo, having paid the loss, intervened for their interest, alleging that the sole fault lay with the New York.

"On January 25, 1895, the parties stipulated that the damage sustained by the New York amounted at that time to $3,391.19. The other damages having been determined, decree was entered in favor of appellant for its own damage, and as trustee for the cargo damage, the decree providing, however, that the amount allowed for cargo insured by the intervening companies be paid to them.

"The owner of the New York appealed. The United States Circuit Court of Appeals for the Sixth Circuit reversed the decree of the District Court and held the propeller Conemaugh solely at fault, dismissed the libel and the petitions of the insurers, and ordered decree against this appellant *in personam* for the New York's damage: 82 Fed. 819. Petition for re-hearing was denied.

"This appellant and the intervening insurers petitioned the Supreme Court for writ of *certiorari*. The petition was granted, and on hearing both vessels were held at fault: 176 U. S. 187.

"Mandate thereupon issued to the District Court, directing a decree in accordance with the opinion. Decree was entered in the District Court, dividing the damages sustained by the steamers, which, as of July 3, 1896, required the owner of the New York to pay to the appellant herein in its own right $13,083.33, with interest at seven per cent from that date until paid, and required the New York to pay the entire cargo damage. The insurers on cargo

which had already intervened were decreed $19,841.56. The balance of the cargo damage, amounting to $19,627.67, was decreed to appellant as trustee.

"The owner of the New York then petitioned the Supreme Court for writ of mandamus, directed to the District Court for the Eastern District of Michigan, to require said Court to enter a decree which would divide the damage to cargo equally between the New York and the Conemaugh. Writ in the alternative was issued, answered, and on hearing the petition was dismissed, as the decree entered was in accordance with the mandate: 178 U. S. 317.

"Although the application to the Supreme Court was to enter decree which would divide the cargo damage *equally* to the two vessels, the question of *recoupment* was argued. The Supreme Court said among other things, that no question of *recoupment* was presented to or passed upon by them in deciding the case, and that *if* the District Court erred in not allowing it, it was matter for appeal.

"Thereupon the owner of the New York appealed from the decree so entered. Appellant [here] moved dismissal of the appeal on the ground generally that the Circuit Court of Appeals was without jurisdiction to review in any manner the decree as it had been entered only in conformity with the mandate, and so was the decree of the Supreme Court. The motion to dismiss was denied: 104 Fed. 561.

"The appeal was then argued and the decree below affirmed: 108 Fed. 102.

"The Union Steamboat Company then (in its turn) petitioned the Supreme Court for a writ of *certiorari*, which was granted. The cause was again tried in the Supreme Court and the decree which had been entered by the District Court on its mandate was affirmed: 189 U. S. 363.

"While in the Supreme Court the last time the insurers who had covered that portion of the cargo for which this appellant had continued thereto as trustee, intervened.

"May 16, 1901, after dismissal of the petition for mandamus by the Supreme Court, the owner of the New York paid so much of the cargo damage as the decree required to be paid to the intervenors, and after the affirmance of the decree by the Supreme Court the remaining damage and costs were paid as provided by the decree, and the case closed."

Objections to the libel, for want of jurisdiction and of *res adjudicata*, were raised by exceptions, and renewed by the answer. The answer further sets up, by way of defense, the bill of lading under which the cargo of the Conemaugh was carried, which contained provisions (1) giving to the carrier the benefit of insur-

ance on the cargo—such insurance being effected and the loss paid to the shipper—and provided against liability therefor, unless (2) written claim was made within thirty days, and (3) action was brought for any loss within three months; and it is averred that no claim was so made or action brought.

No issues of fact arose, as a stipulation was filed which brought in the printed records in the prior proceedings as evidence, and admitted the averments of the answer respecting the terms of lading, fact of insurance and payment of loss to the shipper, and that no claim was made by shipper or insurer, or suit brought against the Conemaugh for the cargo loss, within the limitations of the bill of lading.

SEAMAN, *Circuit Judge,* delivered the opinion of the court.

When the present libel was filed, to enforce further contribution against the Conemaugh for damages which the New York was condemned to pay, the liability arising out of the collision had been in litigation between these steamers, with cargo representatives impleaded, for upwards of twelve years. The controversy was various in results during its progress and prolific in contributions to judicial reports, including three unanimous opinions respectively in the Circuit Court of Appeals and the Supreme Court in its course. It resulted in a final adjudication of mutual fault, awarding all damages arising out of the collision, with recovery against the New York alone for cargo damage and equal division of the aggregate of damages to the steamers; so that, on the face of this record, it would seem that no issuable liability between the steamers could have escaped judicial settlement. Nevertheless, a novel and interesting question is presented for review, without precedent for the relief sought by this libel, under analogous conditions; and the contention upheld by the decree is not without seeming force, under the general authorities cited and intimations in the opinions upon final appeal from the former decree.

Primarily, however, jurisdiction is challenged to entertain the libel, in any view, as a claim to enforce an assumed right of contribution arising out of the payment by the New York of the entire cargo damage when mutual fault was adjudged, and the admiralty cognizance of such subject matter for independent relief, must be ascertained before inquiry is open whether jurisdiction can be exercised or relief be extended in the case at bar.

1. The broad jurisdictional objection is thus stated in the brief on behalf of the appellants: "that the right of contribution when it exists cannot be asserted in the admiralty, either *in rem* or *in personam.*" Were the general proposition thus advanced an open question, and not clarified and ruled by the opinion of this court in *The Mariska,* 107 Fed. 989, 47 C. C. A. 115, its solution for the ob-

jects of the present case would not be free from difficulty in the light of the general authorities cited. But in that instance jurisdiction was upheld of an independent libel in rem, filed by the owners of the steamer Jay Gould against the Steamer Mariska, to enforce so called contribution for damages charged against and paid by the Jay Gould in a prior proceeding wherein the Jay Gould was the sole respondent, for the alleged mutual fault of that steamer and the Mariska in causing the collision. In effect, it was ruled that the contribution sought, which was the subject matter of the libel, was well recognized as a liability arising under the admiralty law, and as such was cognizable, not only as an incident to the primary cause for recovery of damages for the fault of both, but through an original libel to enforce the liability when not otherwise enforceable. This view we believe to be in harmony with the general line of American authorities, departing from the narrow interpretation which prevails in England and adopting that of the original admiralty jurisdiction, which was "interpreted by a more enlarged view of its essential nature and objects." *Insurance Co.* v. *Dunham*, 11 Wall. 1, 24. The case of the *Mariska* plainly authorizes admiralty cognizance of an independent libel for contribution; and this irrespective of the question whether the enforcement rests on the doctrine of subrogation to a lien in favor of the cargo, as there indicated, or upon the alleged liability to contribute by way of equalizing the burden for the fault and injuries, *vide The North Star*, 106 U. S. 17, 22.

In reference to the argument that rights resting on and merged in a decree are no longer maritime, in the jurisdictional sense, it may be observed that the rule is settled otherwise in early cases in admiralty (*Penhallow* v. *Doane's Admr.*, 3 Dall. 54, 86; *Jennings* v. *Carson*, 4 Cranch. 2, 21; *The Enterprise*, 2 Curt. 317, F. C. N. 4497; *The Centurion*, 1 Ware 490, F. C. No. 2554), though it well may be that such rule is applicable only to relief by way of enforcing the decree.

The general contention, that a libel for contribution cannot be entertained, is overruled.

2. The propositions on which the libel and decree rest are substantially these: That the maritime law creates an absolute liability against each of the contributors to a collision, mutually at fault, to bear an equal share of the resulting loss to vessels and cargo; that, because the New York was condemned in the prior litigation with the Conemaugh and the representatives of her cargo, among other liabilities, to pay the entire cargo damage, without recoupment or allowance for any share of such damage chargeable to the Conemaugh for her adjudged mutual fault—no pleading to that end having been filed by the New York—the fact of such adjudication and

of payment to the cargo representatives created *ipso jure* liability against the Conemaugh to reimburse one half of the amount so paid; and that, accordingly, exemption of the Conemaugh from liability to the cargo owners, under the bills of lading, furnishes no defense against such reimbursement by way of contribution. This contention assumes that the admiralty rule, that both vessels at fault for a collision must bear the damage in equal parts, creates distinct and absolute liability for each element of damage entering into the adjudication and payment; so that, failing such equal division of the cargo damage in the primary suit between the vessels, the charge to and payment by the New York alone raised an independent cause of action against the Conemaugh to pay one half the amount, though not obligated to the damnified cargo representatives for any part of such injury.

The theory on which *The Mariska* case *supra*, proceeded is thus adopted, in so far as it sanctions independent right of action for unquestionable contributory liability, but the further doctrine of that decision, that the right arises out of subrogation, is necessarily denied. Intimations of independent remedy to enforce contribution, in the event of actual liability of the Conemaugh for cargo damage, which appear in the opinions of the Circuit Court of Appeals, on final appeal of the New York in the primary suit (*The New York*, 108 Fed. 47, 102, 107, 47 C. C. A. 232), and of the Supreme Court, upon certiorari (*The Conemaugh*, 189 U. S. 363, 368), are assumed to sanction this theory and proceeding; although no sanction appears in either of these opinions for liability upon the part of the Conemaugh to cargo damage, if not liable to the cargo owners, and the opinion of the Circuit Court of Appeals clearly implies that the Conemaugh was not chargeable in such event. The extreme contention of absolute liability, however, notwithstanding both the failure to obtain division in the prior litigation and non-liability of the Conemaugh to the cargo representatives, is pressed in support of the present decree, and it is obvious that it can rest on no other ground.

As a general proposition of maritime law, with the effect of the adjudication left out of consideration, it is doubtless the doctrine of the cases referred to—*The North Star*, 103 U. S. 17, and the *Chattahoochie*, 173 U. S. 540—that the fact alone of non-liability of the Conemaugh to her cargo owners does not exonerate her from contributory liability to the New York, if the New York is, nevertheless, liable for such damages. Whether the doctrine of this line of authorities—which is peculiar to the maritime law and not of equitable origin—could be deemed applicable, as an original proposition, to the insurance provision in the instant bill of lading, either to charge the one steamer with full recovery in favor of the insurers,

or to enforce contribution against the other, is a question not arising upon this review, nor open to consideration, in our understanding of the effect of the proper adjudication, either in the admiralty or under the general law.

The general rule of admiralty, preserved from the ancient text of the law, is well settled in collision cases, that each vessel in fault is equally liable for injuries arising and must bear the damages equally, without reference to the degree of fault. *The North Star,* 106 U. S., 17, 20, and authorities reviewed. So, contrary to the rule at common law, one of the parties at fault can maintain a libel against the other for apportionment of the damage in conformity with such maritime rule. For cargo damage the parties injured may proceed against one offending vessel and obtain decree against it for the entire damage, unless the other, jointly liable, is brought into the proceeding; but when both are before the court the entire damages arising from the mutual fault are added together, and the amount is apportioned in equal parts to be borne equally by them. *The Atlas,* 93 U. S. 302, 313, 317. When liability against one is adjudicated without the presence of the other, the apportionment for mutual fault cannot be made, and the liability can then be apportioned in further proceedings as held in *The Mariska, supra.*

The rule, as defined under all the authorities referred to, plainly intends apportionment of the damages between the joint contributors at fault in a single adjudication. Thus in the instructive opinion of Mr. Justice Bradley, in *The North Star,* 106 U. S. 17, 20, 22, the distinguishing feature of the rule is pointed out, that the authorities recognize only an equal division of the aggregate joint damage and not a liability of one to the other for specific damages inflicted; that all concur in the view that "the entire damage to both ships is added together in one common mass and equally divided between them, and thereupon arises a liability of one party to pay to the other such sum as is necessary to equalize the burden." It was there held, accordingly, that the statutory limitation of liability on the part of one was not applicable until the aggregate of joint damage was ascertained, and then only "to avoid payment *pro tanto* of the balance found against such party." So in *The Chattahoochie,* 172 U. S. 540, 553, this language of the *North Star* case is adopted as equally applicable to cargo damage involved in the collision; and the provision known as the Harter act, touching cargo liability of the carrier, was held inapplicable until the aggregate injury was ascertained and apportioned under the rule. Of like effect is the case of *The George W. Roby,* 49 C. C. A. 481, 111 Fed. 601, 614.

The prior proceedings in admiralty, averred in the present libel, were of the character contemplated by the rule for ascertaining,

dividing and charging the liability between all parties in interest. The damages suffered by the steamers respectively and the damage to the cargo of the Conemaugh were assessed, and while aggregate damages to both steamers were apportioned equally, the decree charges the cargo damages against the New York alone. Equal division as well of this cargo damage was strenuously sought on behalf of the New York, in the final hearing before the trial court and in both reviewing tribunals, upon the same argument and citations which are urged upon this appeal, but such relief was denied. Like contention is renewed here, for independent relief, upon averment that the burden of cargo damage was thus imposed for want of a pleading in the case, setting up the claim by way of recoupment. Be this as it may, the fact remains that the decree passed, touching all interests, with all damages apportioned as stated. In other words, the respective rights and liabilities of the parties arising out of the collision were thus adjudicated in admiralty, with all parties before the court and all issues heard as raised by them respectively. These conclusions, thereupon, are unmistakably expressed in the opinions and carried out in the final decree: (1) That both steamers were at fault for the collision; (2) that the damages suffered by both steamers were ascertained, the aggregate sum divided and so charged in equal shares; (3) that the underwriters of the cargo, being innocent of the fault of either vessel, are entitled, as they insisted "to a recovery to the full amount of their damage against the New York, notwithstanding the Conemaugh may also be in fault for the collision"—175 U. S. 209—and this amount is ascertained and so charged; (4) that such provision in the decree conformed to the mandate of the Supreme Court, and if the trial court "erred in refusing to allow recoupment, the remedy is by appeal"—178 U. S. 320; and finally, in effect, (5) that division of cargo damage was not a right arising *ipso jure* out of the fact of contributory fault on the part of the Conemaugh; and without issue raised thereupon "of liability of the Conemaugh to her cargo underwriters" it could not be "summarily assumed that because she was found in fault, and liable to the New York for one half of her damages, she is also liable to the underwriters upon her cargo," and thus foreclose defense under the "special stipulations in her bills of lading," which are asserted on behalf of the Conemaugh as written therein "to set up against the claims of the underwriters." *The New York*, 108 Fed. 102; 47 C. C. A. 232; affirmed in *The Conemaugh*, 189 U. S. 363.

The adjudication of liabilities arising out of the collision and apportionment thereof, which thus appear is, as we believe, the proceeding in admiralty contemplated by the rule (as defined in *The North Star, supra,* and *The Chattahoochie, supra*), for all cases

of maritime collision. It is unquestionably *res judicata* upon all matters involved in that contest. The right of the underwriters to recover the entire cargo damage against The New York, irrespective of fault on the part of The Conemaugh, is there settled. However questionable it may appear, whether such amount was justly recoverable in view of the provision now disclosed in the bill of lading, giving the Conemaugh the benefit of insurance on her cargo—that is, whether the introduction of such contract would not have served as a defense, in whole or in part, when the Conemaugh was found in fault, on the authority of *Phoenix Insurance Co.* v. *Erie & Western Transportation Co.* 117 U. S. 312, 324, 325 and other cases—nevertheless full recovery was awarded and is now incontestible.

We are of opinion that such adjudication leaves no issue open in the admiralty, between these parties, arising out of the collision; that jurisdiction therein cannot be exercised to enforce equalization of the burdens imposed upon one and the other party in the former decree, in contravention of its express terms; although it may extend to the enforcement of contribution against one not involved in such decree, for recognized joint liability within its contemplation.

The remark in the final opinion of the Supreme Court (*The Conemaugh*, 189 U. S. 363, 367), in reference to the modification of the decree there sought, if applicable to the like contention for review, is decisive of the present libel, namely: "The decree against it, the New York now seeks to shift in part to the owners of the Conemaugh. Indeed, not to shift it, but virtually to vacate it and put the claims of the cargo owners into controversy with the Conemaugh. This, we think, should not be done." The present decree, in effect, not only accomplishes the modification of the former decree, which was thus refused by both appellate tribunals, but bars contest of liability on the part of the Conemaugh to the cargo owners. Surely, if the appellate jurisdiction is inadequate for such object, it is not within the coordinate jurisdiction of another court, sitting in admiralty, to grant relief from the terms of the prior decree, or to reopen the controversy.

Assuming for the inquiry (with no intimation of such conclusion from the facts) that equities appear in any phase of the case, for charging either the owners of the Conemaugh or the underwriters with a share of the liability thus imposed upon the New York, the equities so assumed arise out of the conduct and results of the litigation in reference to such claim of cargo damage, and not out of the collision, and so treated are not cognizable in admiralty, apart from a primary cause to establish the respective rights and liabilities of the parties concerned. Courts of admiralty are not vested with the powers of a court of equity, though equitable principles

are observed and equities recognized, when the primary cause is within their limited jurisdiction. *The Eclipse,* 135 U. S. 599, 608, and cases cited. If the supposed right to enforce contribution exists the way is not afforded in the admiralty forum.

In no aspect of the case, therefore, can we discover ground for the exercise of jurisdiction in the admiralty to intervene for the relief granted by the decree from which this appeal is brought, or for any form of relief under the circumstances stated in the libel. Accordingly, the decree of the District Court is reversed, with direction to dismiss the libel, as not stating a case for relief in the admiralty.

And afterwards, to-wit: On the first day of August, 1905, in the October term last aforesaid, the following further proceedings were had and entered of record, to-wit:

Tuesday, August 1, 1905.

Court met pursuant to adjournment.

Present:

Hon. Peter S. Grosscup, Circuit Judge, presiding.
Hon. Francis E. Baker, Circuit Judge.
Hon. William H. Seaman, Circuit Judge.

Erie and Western Transportation Company, 1137 *vs.* Erie Railroad Company.	Appeal from the District Court of the United States for the Northern District of Illinois, Northern Division.

This cause came on to be heard on the transcript of the record from the District Court of the United States for Northern District of Illinois, and was argued by counsel.

On consideration whereof, It is now here ordered, adjudged and decreed by this court that the decree of the said district court in this cause be, and the same is hereby reversed with costs; and that this cause be, and the same is hereby remanded to the said district court with direction to dismiss the libel as not stating a case for relief in admiralty.

UNITED STATES CIRCUIT COURT OF APPEALS.
For the Seventh Circuit.

I, EDWARD M. HOLLOWAY, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing typewritten and printed pages, numbered from 1 to 15, inclusive, contain a true copy of the papers filed (except briefs of counsel) and proceedings had thereon, in the United States Circuit Court of Appeals for the Seventh Circuit, in the case of Erie and Western Transportation Company v. Erie Railroad Company, No. 1137, October Term, 1904, as the same remains upon the files and records of the United States Circuit Court of Appeals, for the Seventh Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at City of Chicago, this twenty-ninth day of September, A. D. 1905.

[UNITED STATES CIRCUIT COURT OF APPEALS. SEVENTH CIRCUIT.]

EDWARD M. HOLLOWAY,
Clerk of the United States Circuit Court of Appeals for the Seventh District.

64 United States Circuit Court of Appeals for the Seventh Circuit.

In the Matter of the Petition of the Erie Railroad Company for a Writ of Certiorari Directed to the Circuit Court of Appeals for the Seventh Circuit to Bring Before the Supreme Court the Case of

THE ERIE RAILROAD COMPANY
vs.
THE PROPELLER CONEMAUGH, ERIE & WESTERN TRANSPORTATION COMPANY, Claimant.

It is stipulated and agreed by and between the parties hereto, by their respective proctors, that the certified copy of the transcript of record in this cause, filed by the Clerk of this Court, and now on file in the office of the Clerk of the Supreme Court of the United States, in an application therein made for a writ of certiorari in this cause, entitled Erie Railroad Company *vs.* Propeller Conemaugh, number 433 of the October term, 1905, shall be taken as a return to the writ of certiorari granted and issued by the Supreme Court of the United States on the 31st day of October, 1905.

C. E. KREMER,
W. O. JOHNSON,
Pr. Libellant.
HARVEY D. GOULDER,
Proctor for Defendant.

Endorsed: 1137. U. S. Circuit — of Appeals. Erie R. R. Co. *vs.* Prop. Connemaugh. Stipulation. Filed Nov. 14, 1905. Edward M. Holloway, Clerk. C. E. Kremer, W. O. Johnson, for Libellant.

65 UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the United States Circuit Court of Appeals for the Seventh Circuit, Greeting:

Being informed that there is now pending before you a suit in which Erie & Western Transportation Company is appellant and Erie Railroad Company is appellee, No. 1137, which suit was removed into said Circuit Court of Appeals by virtue of an appeal from the District Court of the United States for the Northern District of Illinois, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the

said Circuit Court of Appeals and removed into the Supreme
66 Court of the United States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 31st day of October, in the year of our Lord one thousand nine hundred and five.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

67 [Endorsed:] File No. 19,935. Supreme Court of the United States. No. 433, October Term, 1905. Erie Railroad Co., *vs.* Erie & Western Transportation Co. Writ of certiorari. Filed Nov. 14 1905 Edward M. Holloway, Clerk.

UNITED STATES OF AMERICA, *Seventh Circuit, ss:*

In obedience to the command of the foregoing writ of certiorari and in pursuance of the stipulation of the parties, a full and true copy of which is hereto attached, I do hereby certify and return that the transcript of the record filed with the application to the Supreme Court of the United States for a writ of certiorari in the case of Erie and Western Transportation Company, appellant, *vs.* Erie Railroad Company, appellee, is a full, true and complete transcript of the record upon which said cause was heard in the United States Circuit Court of Appeals for the Seventh Circuit, together with all proceedings in said court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this fifteenth day of November, A. D. 1905.

[Seal United States Circuit Court of Appeals, Seventh Circuit.]

EDWARD M. HOLLOWAY,
Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.

68 [Endorsed:] File No. 19,935. Supreme Court U. S. October Term, 1905. Term No. 433. Erie Railroad Co., petitioner, *vs.* Erie and Western Transportation Co. Writ of certiorari and return. Filed Nov. 17, 1905.